

HAC8TUC1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

16 Cr. 91 (PKC)

6 SCOTT TUCKER and
7 TIMOTHY MUIR,

Trial

8 Defendants.
9 -----x
10

11 New York, N.Y.
12 October 12, 2017
13 10:15 a.m.

14 Before:
15

16 HON. P. KEVIN CASTEL
17

18 District Judge
19 and a jury
20

21 APPEARANCES
22

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Summation - Mr. Ravi

1 (Trial resumed)

2 THE COURT: I understand our jurors are here.

3 I will get them from the jury room.

4 (Jury present)

5 THE COURT: Please be seated.

6 Good morning, ladies and gentlemen.

7 As I told you, we are beginning now with the closing
8 arguments, and you have already heard me say this, that closing
9 arguments are not evidence. They are the lawyers' view of what
10 the evidence shows. If any lawyer states facts that doesn't
11 match up with your recollection, it's your recollection that
12 controls, and you will have the ability in the jury room, if it
13 becomes necessary, to have testimony read back to you if you
14 need it from the trial, the official record of the trial.

15 The other point is the law requires me to tell the
16 parties how I plan to instruct the jury on the law, and I have
17 done that in advance. So it's appropriate for a lawyer to say
18 something like, I expect the judge will instruct you that. But
19 if what comes after the word "that" is different from what I
20 tell you in the final instructions, it's my instructions on the
21 law that you will follow.

22 And with that, the government may begin.

23 MR. RAVI: Thank you, your Honor.

24 THE COURT: Mr. Ravi.

25 MR. RAVI: As we told you when this case started a

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1 month ago, this is at its heart a simple case about greed and
2 lies. These two men ran a payday loan business that charged
3 illegal interest rates of over 600 percent, 700 percent, even
4 1,000 percent. They lied to millions of customers about their
5 loan terms in order to take even more money from them, and then
6 they laundered the billions that they took through bank
7 accounts that they pretended belonged to someone else.

8 This man, the defendant, Scott Tucker, he started and
9 ran it all. And because he knew that he was committing crimes,
10 he tried to hide his payday loan empire behind a series of
11 fronts, from County Bank, to the Nevada shell companies, to the
12 Native American tribes you heard so much about.

13 Then that man, over there at the end, Timothy Muir,
14 the defendant, he joined Tucker's scheme in the middle of it
15 and he helped Tucker come up with new lies in order to hide
16 their crimes.

17 You have heard testimony over the past month from 25,
18 over 25 witnesses. So you know from the evidence in this trial
19 that Tucker and Muir knew that what they were doing was
20 illegal. You know that from the fact that they tracked
21 thousands of complaints from customers, attorneys general, and
22 consumer agencies, telling them that what they were doing was
23 illegal. You know that from the call center scripts that they
24 had prepared that deal with the customers who told them that
25 they were charging illegal interest rates. You know that from

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1 the sham loan approvals, the fake titles and names, the lies in
2 affidavits to courts, the lies to regulators, to banks, to
3 customers, and to their own employees.

4 These are just a few examples of the evidence that we
5 will be going through that proves that these defendants had a
6 guilty state of mind.

7 Now, the defendants did all of that for a single
8 purpose -- to make hundreds of millions of dollars, which they
9 kept hidden in bank accounts that supposedly belonged to
10 tribes.

11 Tucker spent that money for personal luxuries -- a
12 fleet of Ferraris and Porsches, his private jet, a mansion in
13 Aspen -- and he did all of this while their victims, like
14 Andrew Leibenguth, Richard Hamner, Athena Sanchez, they were
15 struggling to make it to their next paycheck. In doing all
16 these things, these defendants committed federal crimes.

17 Now, in a minute I am going to talk in more detail
18 about how the evidence proves that these defendants are guilty
19 of these crimes. But first I want to take a minute to talk
20 about the charges here.

21 So you will see on your screen in front of you there
22 are 14 counts in the indictment, but they can really be broken
23 down into four categories of crimes.

24 The first category is that the defendants participated
25 in an enterprise engaged in the collection of unlawful debt.

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1 We will call that the collection of unlawful debt counts.

2 The second category, Counts Five through Six, the
3 defendants committed wire fraud by lying about loan terms and
4 the identity of the lender. That's the second category, wire
5 fraud.

6 Then we get to the third category, which is money
7 laundering. Money laundering to promote the wire fraud and to
8 conceal the source and ownership of the proceeds of that wire
9 fraud.

10 Finally, we have what is called Truth in Lending Act
11 violation for providing false information about the true cost
12 of the loans.

13 Counts One, Five, and Seven are conspiracy counts, and
14 we will talk about that in a bit.

15 I want to make clear right now that this case is not
16 about County Bank, it's not about Nevada shell companies, it's
17 not about Native American tribes. It's about these two men,
18 none of who belonged to a tribe or to a bank, who charged
19 sky-high illegal interest rates, lied about loan terms and
20 laundered money through banks accounts belonging, supposedly
21 belonging to tribes.

22 These are the crimes we are going to talk about today.

23 The defendants went to great lengths to hide all of
24 these crimes behind tribes and banks and corporate fronts, and
25 we will get to talking about that, because it is only further

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1 evidence of their crimes.

2 So let's turn to the first category of crimes,
3 collection of unlawful debt.

4 Now, I am going to be spending a majority of my time
5 with you talking about this first set of crimes. That's not
6 because it's any more complicated than those other sets of
7 crimes. They are all straightforward. But only because once
8 we have gone through all the evidence for this first set of
9 crimes, there is no need to spend the time to go through it for
10 the other three sets of crimes. We can just refer back to it.

11 So Count One is the conspiracy count, and the second
12 and third counts relate to the collection of unlawful debt
13 through specific portfolios that we have talked about
14 throughout this trial.

15 So turning first to conspiracy, to the elements for
16 conspiracy. These first two relate to the elements for
17 conspiracy and then there are other elements that relate to the
18 object of the conspiracy. Again, remember that what I say
19 about the law is not the law; it's only what Judge Castel tells
20 you.

21 So the first element of conspiracy is that there was a
22 conspiracy. A conspiracy is simply an agreement or
23 understanding by two or more persons to accomplish an unlawful
24 objective.

25 The second element is that the defendant intentionally

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joined the conspiracy at some point during its existence. The timing here is important because the defendant, like Timothy Muir, can join the conspiracy at any time after it has begun.

You have heard overwhelming evidence that there was an agreement or understanding since 1997 through 2013 to collect unlawful debt. You heard from Adrian Rubin and you saw the County Bank agreements. Tucker agreed with Hallinan to extend unlawful debts as early as 1997. And many others joined that conspiracy over the following years.

Muir was one of those people who joined Tucker's team, and he is undoubtedly part of the same agreement or understanding that is that conspiracy.

Now, the other elements of conspiracy relate to the object or purpose of a conspiracy. Those elements are similar to the elements for Counts Two through Four, so I am going to go through them together.

There are five elements for Counts Two through Four. But most of these elements can't reasonably be disputed. So let's take them one by one.

First, there is no reasonable dispute that the enterprise that's referenced as the Tucker payday lending organization in the indictment existed. And I will just refer to it as the Tucker enterprise to save some time.

The defendants used many different names to refer to the Tucker enterprise, whether it's 500 FastCash, One Click

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1 Cash, Ameriloan, or NMS, CLK, AMG, all the names you have heard
2 throughout this trial. You heard from each and every one of
3 Tucker's employees and each and every one of the tribal
4 witnesses that that business was located right here in front of
5 you, in Overland Park, Kansas.

6 As each one of those witnesses told you and as all the
7 e-mails showed you, this here, in Kansas City, is where the
8 Tucker enterprise operated from, where it was managed, where
9 loans were approved, where call centers relating to the loans
10 were located, and where collections were made for those loans.

11 As the number of employees at the Tucker enterprise
12 grew from just a handful to over 1500, one thing did not
13 change: Mr. Tucker was in control of that enterprise.

14 Now turning to some of the other elements that aren't
15 reasonably in dispute.

16 Second, there is no reasonable dispute that the Tucker
17 enterprise affected interstate commerce because of the
18 automatic withdrawals that were made from borrowers' banks
19 accounts from all over the country. This is a necessary
20 element of every crime in the indictment, and it's not in
21 dispute.

22 Third, that the defendants were employed or associated
23 with the Tucker enterprise at some point during the period
24 charged in the indictment. There can be no real dispute here
25 that Tucker and Muir were employed or associated with the

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1 Tucker enterprise and at some point during that period that
2 they were aware of the nature of its business.

3 So now let's turn to the fifth element. We will get
4 back to the fourth element.

5 This fifth element also can't reasonably be in
6 dispute. The evidence overwhelmingly shows that Tucker and
7 Muir participated in the Tucker enterprise through the
8 collection of unlawful debt. The interest rates charged by the
9 defendants' business were illegal in many of the states in
10 which the defendants loaned money. That's really not in
11 dispute.

12 Regardless of the amount of the loan, the annual
13 interest rate was always in the hundreds of percent, ranging
14 from 600 percent to even 1,000 percent.

15 Crystal Grote, a senior manager in the Tucker
16 enterprise, testified that those interest rates were the same
17 when she began with the company in 1999. And you can see from
18 these loan applications in front of you that those interest
19 rates did not change through at least December of 2012, in this
20 loan application for Amy Weatherwax, and that began almost six
21 months after the FTC investigation became public.

22 It's crystal clear that these interest rates broke the
23 law. Judge Castel will instruct you that an interest rate is
24 unlawful if it is twice the limit set by state usury laws.

25 The judge will further instruct you, as we expect,

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1 that the annual interest limit is 25 percent per year in New
2 York and 36 percent or less in ten other states.

3 The interest charged by the defendants to borrowers in
4 New York and those other states was clearly unlawful, because
5 it was many more than ten times the limit set by those states'
6 usury laws.

7 Let me be clear. The interest rates here are illegal
8 even if there was no such thing as that automatic renewal you
9 heard so much about. Those automatic renewals were
10 deliberately put in place to take even more money from
11 customers, more than the amount of the illegal interest that
12 was charged. And that egregious conduct with the automatic
13 renewal is a whole other crime that we will talk about when we
14 get to the fraud counts. For now, I only want to focus on the
15 illegal interest rates.

16 But even without those automatic renewals, the
17 interest rates charged by the defendants were still criminal in
18 states like New York.

19 By the way, the judge will also instruct you on
20 something that is called aiding and abetting, which just means
21 you don't need to find that the defendants themselves were the
22 ones on the phone with customers collecting their unlawful
23 debt. Rather, they can act through their employees so long as
24 they intended that the crime happen and they took some steps to
25 commit the crime. You know the defendants here were directly

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1 involved in the collection of debt and they also acted through
2 their own employees.

3 So what is in dispute if none of those elements are
4 reasonably disputed? Perhaps the core dispute in this case is
5 whether the defendants acted willfully and knowingly in the
6 collection of unlawful debt.

7 The dispute here focuses on whether defendants acted
8 willfully or, in other words, whether the defendants were
9 involved in collecting debt from customers at interest rates
10 that they knew were illegal. But though the defendants dispute
11 it, the evidence establishes beyond a reasonable doubt that the
12 defendants knew exactly what they were doing when they were
13 committing these crimes. It's clear as day.

14 Now, first, the defendants actually had scripts
15 prepared for call center employees to deal with customers who
16 complained that their interest rates were illegal. Think about
17 that. The number of complaints from customers regarding their
18 illegal interest rates were so high that they actually had to
19 come up with scripts to deal with customers about that. And it
20 was company policy to use these scripts.

21 As Crystal Grote testified, Tucker created this policy
22 and Muir actually helped write this very script in front of
23 you. And Mr. Muir also gave direction to the compliance
24 department on how to deal with customers who complained about
25 their illegal interest rates. That's at page 760 of the

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1 transcript.

2 Here is an e-mail showing that Muir was responsible
3 for developing scripts to cover these compliance issues. And
4 you can see who is overseeing it all. It's Scott Tucker at the
5 top of that chain.

6 But it was not only customers who complained. The
7 Better Business Bureau told Tucker's company that there was
8 alarming number of complaints, and so did attorneys general
9 across the country, including the New York Attorney General.

10 For example, remember when the New York Attorney
11 General sent that letter to 500 FastCash following up on Athena
12 Sanchez's complaint that she was charged interest above New
13 York's 25 percent usury rate? Indeed, there were so many law
14 enforcement agents and officers that were contacting the Tucker
15 enterprise, they had to have complaint procedures put in place
16 for what to do when all of these agencies contacted them about
17 their illegal interest rates.

18 There were so many complaints that Tucker and its
19 employees even tracked them, beginning as far back as 2004.

20 From 2004 to 2011, the number of complaints
21 skyrocketed as the Tucker enterprise grew in size. They
22 received more than 1500 complaints in 2006, as you can see, and
23 as many as more than 6,000 complaints in 2011. That's just
24 through July 31st of that year. And these complaints included
25 internal complaints from customers as well as external

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1 complaints from agencies and law enforcement agencies.

2 In total, according to Tucker's own records right
3 here, there were almost 25,000 complaints from customers from
4 2005 to 2011. And what was Tucker's response when he was sent
5 this data? He said, "We need a whole unit that is specialized
6 in dealing with this."

7 Tucker didn't do what a legitimate business person
8 does, because Tucker was not a legitimate business person.
9 Tucker didn't ask how these complaints could be reduced. He
10 didn't ask why so many customers were complaining. He didn't
11 need to. Neither did Tim Muir. They both already knew they
12 were charging illegal interest rates.

13 But Tucker and Muir did not care because that was
14 exactly what they were trying to do. That was the plan all
15 along.

16 Ladies and gentlemen, based solely on the evidence we
17 have gone through, there is overwhelming evidence that both
18 Tucker and Muir are guilty of Counts One through Four for the
19 collection of unlawful debt through the charging of interest
20 rates that they knew to be illegal and for conspiring to do
21 that same very thing.

22 Now, in addition to all that evidence that we have
23 just talked about, you know that Tucker and Muir knew their
24 interest rates were illegal for another fundamental reason.
25 There is no other explanation for why they took so many steps

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1 to hide their business.

2 As witness after witness has testified, the only
3 reason they needed County Bank, Nevada shell companies and
4 tribes to act as fronts for their business is because they knew
5 they could be sued and investigated for charging illegal
6 interest rates.

7 Use your common sense. If the defendants didn't know
8 they were charging illegal interest rates, they would have no
9 reason to form these relationships with county banks or tribes
10 or shell companies. Those relationships also weren't real.
11 They were shams. And the fact that they were shams is just
12 more proof that the defendants were intentionally breaking the
13 law.

14 I am now going to walk you through three fronts, five
15 shams and ten lies that the defendants used to try to hide the
16 fact that Tucker was the man behind the curtain charging those
17 illegal interest rates and collecting billions of dollars from
18 ordinary Americans.

19 Keep in mind as we go through this that just because
20 Tucker hid behind different fronts to hide his crimes, this was
21 all one continuous scheme. The crime is charging illegal
22 interest rates which Tucker never stopped doing. All that
23 changed is the methods that he used to hide from the law.

24 Tucker started hiding behind County Bank and the
25 Nevada shell companies. Then when County Bank can no longer be

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1 used, Tucker turned to the tribes to hide his business, and
2 Muir helped him to it. And for years Tucker was even charging
3 illegal interest rates and lending under just those Nevada
4 shell companies. Regardless of which front he used, the goal
5 was always the same -- charge illegal interest rates and avoid
6 lawsuits and investigations by hiding behind fronts, shams and
7 lies.

8 So let's turn now to the first front, County Bank.

9 You learned how Tucker used County Bank as one of his
10 fronts. You learned that Tucker began payday lending through
11 National Money Service, or NMS, in the late 1990s. NMS was one
12 of those Nevada shell companies, those nominee companies that
13 Tucker used to hide his ownership with the help of people like
14 Aaron Shoaf, James Fontano, Michael Hicks. Those men signed as
15 officers of these shell companies even though they knew nothing
16 about them.

17 As Crystal Grote testified, when she started with
18 Tucker in 1999, NMS was using the doing business name, or
19 d/b/a, 500 FastCash. Then Tucker instructed her to begin
20 putting County Bank on those loan documents.

21 You heard about the County Bank front and it was
22 explained by Adrian Rubin, a twice convicted felon who has been
23 engaged in fraud for much of his life. As you see here, Rubin
24 testified pursuant to a cooperation agreement after pleading
25 guilty to collecting unlawful debt because he used County Bank

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1 and a Native American tribe as fronts in order to charge
2 exorbitant interest rates across the United States.

3 You also heard about County Bank from Crystal Grote,
4 another cooperating witness who was part of Tucker's enterprise
5 for nearly the entire period we have been talking about.

6 Grote pleaded guilty to making false and misleading
7 statements in a deposition with the FTC about her involvement
8 with Tucker's enterprise.

9 Now, both Rubin and Grote testified in this trial with
10 the hopes of receiving leniency at their sentencing, and you
11 should scrutinize their testimony for that reason. But there
12 is no better way to learn about these defendants' crimes than
13 hearing about how they were committed by people with inside
14 knowledge of those crimes. And as you will see for yourself,
15 the testimony of Grote and Rubin is corroborated by all the
16 other evidence in the trial.

17 So Adrian Rubin told you how he and Tucker used County
18 Bank as a front for their respective payday loan businesses as
19 well as why it was crime. County Bank, as you recall, was a
20 single-branch back in Rehoboth Beach, Delaware. Because it had
21 what was called a federal charter, it can extend payday loans
22 all across the country at any rate it chose without following
23 the usury limits in those different states.

24 But, as Rubin explained, County Bank wasn't actually
25 extending any loans to anyone. He was pretending to be the

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1 lender, when in reality so-called servicers were actually
2 extending the loans. These so-called servicers included Adrian
3 Rubin and included Scott Tucker, who had both partnered with
4 Charles Hallinan, a man you have heard about throughout this
5 trial, a co-conspirator of Mr. Tucker's.

6 Tucker and Hallinan were 50/50 partners at NMS, which
7 itself was one of the so-called servicers in the County Bank
8 program.

9 Tucker's agreement with County Bank was signed in June
10 1998, and Rubin explained to you how this rent-a-bank scheme
11 worked. The bank and the so-called servicers fashioned a fancy
12 agreement to make it seem like the bank was making the loans.
13 But the reality was very different.

14 Even though the agreements with County Bank said that
15 the bank makes the loans, it was actually Rubin and Tucker who
16 put up the money for the loans. The County Bank agreement said
17 that County Bank determined all the conditions, terms and
18 services and made credit standards of the loans, where it was
19 actually Tucker and Rubin who approved the loans according to
20 their own credit standards.

21 Crystal Grote also explained to you that when Tucker
22 was lending under the name County Bank, borrowers applied to
23 500 FastCash at Tucker's offices in Kansas City, not at County
24 Bank in Delaware, and that agents in Kansas City approved those
25 applications.

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1 But as Grote explained to you, no approval was
2 necessary from County Bank for that money to go out.

3 In addition, the agreement stated that County Bank
4 retained legal title to loan documents. But it was actually
5 Rubin and Tucker who had possession of those documents.

6 The agreement also stated that County Bank sold 95
7 percent participation interest in its loans to NMS to make it
8 look like the bank took on some risk. But County Bank simply
9 received a guaranteed 5 percent fee regardless of whether the
10 loan was paid back. And there are even fake participation
11 agreements that were put in place to make sure it looked like
12 that was happening.

13 Finally, statements for bank accounts in County Bank's
14 name were actually funneled unopened through County Bank to
15 Rubin and Tucker to make it appear that County Bank was
16 managing the account.

17 Ladies and gentlemen, the County Bank agreement with
18 Tucker is just one of the multiple examples of how Tucker used
19 paper to cover up his crimes. If there was nothing illegal
20 about Tucker being the lender and simply lending under County
21 Bank's name for a 5 percent fee, why didn't the agreements
22 reflect the true nature of the relationship between Tucker and
23 County Bank?

24 The reason is simple. Because County Bank was only
25 supposed to be able to export interest rates for loans at issue

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1 in Delaware, not loans that Tucker issued in Kansas. And
2 Tucker knew that if he was exposed as the true lender that he
3 would be subject to all kinds of lawsuits and investigations
4 for charging illegal interest rates.

5 So Tucker paid a fee to rent County Bank's name for
6 his business that enabled him to pretend, at least on paper,
7 that he was a federally chartered bank issuing loans in
8 Delaware, when in fact he was a payday lender in Kansas.

9 County Bank began to face scrutiny from the FDIC and
10 imposed restrictions on Tucker's lending practices that he
11 didn't like, because it meant that he would make less money.
12 In fact, Tucker told Rubin and Hallinan, as you heard, that
13 they could make more money if they stopped using County Bank
14 because they were paying 5 percent for County Bank doing
15 absolutely nothing. And that's exactly what Tucker did,
16 because he found a new front in Native American tribes that
17 would take 1 percent.

18 Now, before we turn to the Native American tribes, at
19 the same time that Tucker was lending through County Bank, he
20 was also lending through those Nevada shell companies that we
21 talked about.

22 Here you can see on your slide these Intercept
23 applications.

24 Tucker began to lend through four other Nevada shell
25 companies, four companies separate than NMS, each of which was

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1 associated with a different portfolio of loans. These
2 applications for loan processing through intercept were filled
3 out by Tucker beginning in 2002 for each of these shell
4 companies. And you heard at trial that Intercept was one of
5 the many processing companies that Tucker used to disburse
6 loans to customer's accounts and then to automatically withdraw
7 those payments.

8 In this 2008 letter to his co-conspirator Charles
9 Hallinan, Tucker explained in his own words the history of this
10 scheme. He explained how he and Charles Hallinan together used
11 the Nevada nominee cos, as Tucker called them, to conduct
12 payday lending.

13 He also explained that he used the Nevada shell
14 companies to keep their names out of lawsuits and
15 investigations. Tucker made clear in this e-mail that all the
16 time NMS behind the scenes had total control, ownership and
17 interest in them.

18 Again, there is only one reason why Tucker had to keep
19 his name out of lawsuits and investigations. Because he knew
20 he was charging illegal interest rates.

21 Importantly, in the second part of this e-mail Tucker
22 explained that he had been payday lending through these shell
23 companies through at least 2006.

24 Ladies and gentlemen, this e-mail was a confession.
25 It was a confession by Tucker that he was lending money in

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1 violation of state law, and it was a confession that he was
2 using the shell companies to cover up his crimes. This e-mail
3 is devastating.

4 And the timing here is important because when Tucker
5 is lending money at the same illegal interest rates through
6 these Nevada shell companies beginning in 2002, he did not have
7 the so-called cover of County Bank, which only involved 500
8 FastCash, and he hadn't started using the tribes. He was just
9 charging illegal interest rates through shell companies that he
10 owned in Nevada. This is plainly not legal.

11 Tucker just tried to hide behind shell companies so he
12 wouldn't get caught. This evidence is all you need to know to
13 convict Tucker on Count One, a time during which there is no
14 dispute that Tucker was charging illegal interest rates through
15 the Nevada shell companies.

16 Now, after Tucker became frustrated with the
17 restrictions being imposed by County Bank and states started
18 investigating these shell companies, Tucker began to look for a
19 new front. He came up with the idea of forming relationships
20 with Native American tribes to take advantage of their
21 sovereign immunity. That's front number three.

22 Now, as Judge Castel I expect will instruct you,
23 tribal sovereign immunity protects federally-recognized tribes
24 from being sued by states and others.

25 That's why the defendants wanted to use the tribes,

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1 because they could hide behind them, and the states couldn't
2 investigate the tribes due to their sovereign immunity.

3 But Judge Castel I expect will also tell you that
4 sovereign immunity doesn't give anyone -- not a tribe, and
5 definitely not these two defendants -- any rights to violate
6 the law, state or federal.

7 Scott Tucker and Timothy Muir are not Indian tribes
8 and sovereign immunity does not protect them or any business
9 owned or controlled by them. So that's all this was. Another
10 way to hide from the authorities, like the Nevada companies and
11 County Bank.

12 You heard about how Tucker started his relationship
13 with certain tribes. In the fall of 2003, Tucker began
14 reaching out to several tribes about his lending business. He
15 needed a relationship in more than one tribe because he wanted
16 to have a backup tribe on deck in case anything happened in
17 that relationship.

18 Over time, Tucker signed service agreements with four
19 tribes. The first one signed was an agreement with the Miami
20 tribe in November 2003.

21 Then with the Modoc tribe in December 2003.

22 Kickapoo signed up in January 2004 and that, as you
23 know, was ultimately terminated a year later.

24 Finally, the Santee Sioux signed up February 2005.

25 There was also that attempt to sign an agreement with

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1 the Yurok tribe, whose attorney Lisa Adams realized that Tucker
2 was just trying to run money through tribes. When Adams
3 continued to press Tucker for more involvement in the lending
4 business, Tucker got angry and things went nowhere. No
5 agreement got signed.

6 Why is the Yurok story important, ladies and
7 gentlemen? Because it shows that Tucker did not want a real
8 tribal partner for his business. He just wanted a front. When
9 the tribes specifically pushed to get more involved in his
10 business, Tucker did not want it, and he was left with the
11 remaining tribes to be his fronts.

12 Now, these agreements with each of the tribes were
13 nearly identical and they reflected a pure rent-a-tribe
14 agreement. Tucker provided the money for the loans. Tucker
15 provided all the support staff, equipment, and business
16 arrangements, including advertising, promotion. Tucker
17 reflected the loan payments. Tucker paid the tribes a \$20,000
18 per month minimum or 1 percent of gross collected revenues.
19 And the tribe had no obligation to invest money or pay
20 expenses.

21 Does this sound familiar? It should because it's
22 nearly identical to County Bank, except this time Tucker only
23 had to pay 1 percent of his revenues, not the 5 percent he paid
24 to County Bank.

25 As you heard from Troy Little Axe, Russell Bradley and

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1 Lisa Adams, and then the recordings of Don Brady, the tribe was
2 selling Tucker the ability to hide behind their sovereign
3 immunity for 1 percent of his revenues so that Tucker can then
4 go out and charge illegal interest rates and avoid being sued
5 and investigated. That was the tribes' sole purpose and
6 involvement in the Tucker enterprise.

7 Now, let's listen for a moment to Don Brady explain to
8 Carolyn Williams during one of those recordings you already
9 heard in this trial, Government Exhibit 408.

10 If we can go ahead and play that now.

11 (Audiotape played)

12 MR. RAVI: Don Brady, in an unguarded moment with
13 Carolyn Williams, exposed the true nature of the tribes'
14 relationship for Scott Tucker for what it was -- a front,
15 intended to protect Tucker while he cheated millions of
16 customers by charging illegal interest rates.

17 As you heard during the trial, Tucker provided the
18 tribes with a bunch of paperwork, such as resolutions and
19 ordinances to help form tribal corporations he would use to
20 hide his lending. In other words, Tucker, through the
21 assistance of Conly Schulte, who we will talk about in a bit,
22 became a one-stop shop for creating tribal corporations. He
23 created these official looking licenses with the tribal seals
24 that the defendants showed you during the trial.

25 Do you remember this? On the next line you can see

HAC8TUC1

Summation - Mr. Ravi

1 Tucker asking his assistant Anita Finney to create these
2 licenses by finding the seals or logos for each of the tribes.

3 On the left, as you can see, when she can't find one
4 for Kickapoo, Tucker asked her to use the Santee Sioux logo.
5 These tribes were interchangeable to Tucker.

6 But like much of the paper in this case, it was simply
7 manufactured for a single purpose -- to make it look like the
8 tribe was the lender when it really wasn't.

9 As you heard witness after witness tell you, including
10 Tucker's own employees and the defendants' own tribal
11 witnesses, once tribal resolutions and ordinances were passed
12 and they were provided so that they could be rubber stamped by
13 the tribe, they did little to nothing else. The tribes did not
14 make any decisions regarding the payday loan business, the
15 tribes did not set the illegal interest rates, they did not
16 provide the money for the loans, they did not approve the
17 loans, they did not collect money for the loans, they did not
18 have any access to the books and records. Every single one of
19 those things was done by Tucker and his employees in Kansas
20 City.

21 You also know that certain steps that were taken by
22 the defendants and the tribes were taken. There were other
23 steps that were taken to make it appear that these tribes were
24 actually involved in the lending business in order to make this
25 tribal front appear real.

HAC8TUC1

Summation - Mr. Ravi

1 So we have gone through those three fronts and now
2 it's time to talk about five of the many tribal shams that you
3 heard about throughout this trial to make it appear that these
4 tribes were real when they weren't.

5 We will start with the biggest sham first, the sham
6 approvals.

7 You remember that magic button that Don Brady pressed
8 to supposedly approve the loans. Brady logged into a computer,
9 scrolled down a list of customers, and clicked that magic
10 button to make it look like he had reviewed loan paperwork and
11 approved the issuance of the loans.

12 You heard multiple witnesses, including Tucker's own
13 employees, and the Miami tribal witnesses testified that Don's
14 clicking of that button didn't do anything at all. Tucker's
15 senior manager at work testified that no approvals from tribes
16 were needed for loans to be issued for borrowers. As Carolyn
17 Williams and the defendants' own witnesses, Doug Lankford and
18 Tom Campbell told you, there were no loans being reviewed or
19 processed or approved in tribal land.

20 And also, Brady and others serving as backup for the
21 sham approval, they didn't have any access to loan applications
22 or any financial documents. They didn't have or know of any of
23 the criteria for approving loans. And they couldn't deny loans
24 if they wanted to. There wasn't even a button to deny the
25 loans. There was only an approval button. That's how little

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Summation - Mr. Ravi

1 control that these tribes had.

2 This was a complete sham, a process put in place by
3 Tucker and Muir to enable Tucker to falsely claim that loan
4 operations were happening on tribal land.

5 You specifically know that Muir put this procedure in
6 place knowing that it was a sham. Remember that testimony
7 right in front of you by Scott Mitchell. Muir directed Scott
8 Mitchell to set up an iPad for Brady so that there would be the
9 illusion that Brady was clearing or approving the payday loans.

10 That testimony by itself proves Muir's criminal
11 intent. If he thought the relationship with the tribe is
12 legally defensible, he would have had no reason to instruct
13 Mitchell to create some sort of sham approval through an iPad.

14 Like so much other evidence, the fact that Muir is
15 orchestrating a sham approval establishes his willful
16 participation in collecting unlawful debt.

17 It's also important to remember that the sham approval
18 process was not even set up at the Modoc tribe. Troy Little
19 Axe told you that the only tribal employee involved in the
20 Modoc's business, that he didn't even intend to approve loans
21 and he was not involved in approving loans in any way, shape or
22 form.

23 Let's turn to sham number two, sham business
24 addresses.

25 This second example has to do with the mail. As you

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Summation - Mr. Ravi

1 heard, mail and bank statements were sent to an address on
2 tribal land. You heard from multiple witnesses that the mail
3 received each day was actually packaged up and sent to Kansas
4 City unopened where Tucker's employee would review and process
5 the mail.

6 Tucker and Muir chose to make these business addresses
7 on tribal land, even though nothing actually happened there,
8 because they were trying to create the false impression that
9 the businesses were actually located on tribal land.

10 As Troy Little Axe testified, at one point mail
11 received at a mailbox on tribal land, even though there was no
12 building there because it had been destroyed in a flood, that
13 single mailbox, ladies and gentlemen, is what Tucker
14 represented to the world as the business address for a billion
15 dollar company.

16 Let's go now to the third sham, the tribal boards.
17 You heard testimony about tribal boards that were set
18 up for each of the tribal entities through which Tucker did
19 lending. These boards, again, were set up to make it appear
20 that the lending was tribally managed. But in reality, they
21 were just dummy boards. You knew that from this e-mail where
22 Muir is asking to set up an annual meeting, which he put in
23 quotes by the way, with Don Brady due to the Colorado
24 litigation.

25 (Continued on next page)

HacWtuc2

Summation - Mr. Ravi

1 MR. RAVI: Muir basically admitted that this was a
2 sham during the cross-examination. That wasn't a meeting. It
3 was to help set up Tucker and Muir to lie in court that these
4 boards were real when they really weren't. And at the Modoc,
5 there wasn't even a semblance of a board. Troy Little Axe
6 served as the president and the CEO, and he was a one-member
7 board for almost the entirety of the Modoc's relationship with
8 the Tuckers.

9 Turning to the Miami, you heard every Miami tribal
10 witness testify that the board barely met prior to 2011. And
11 to the extent they did meet, they only met to discuss how much
12 money they were getting from Scott Tucker. They made no
13 decisions regarding the payday loan business, and in fact, they
14 didn't even know what the companies they were supposedly
15 serving did. You heard them in their own board meetings as
16 late as fall 2012.

17 Let's listen to Government Exhibit 404.

18 (Audio played)

19 MR. RAVI: This recording that you just heard took
20 place after all those board meetings that Tim Muir testified
21 about, when he tried to get you to believe that these were real
22 boards. As late as August 2012, Gena Lankford, the chair of
23 the MNES board, asked what MNES did and what AMG did. The
24 defense kept flashing those board minutes in front of you, but
25 the chair of that board didn't even know what the company did.

HacWtuc2

Summation - Mr. Ravi

1 You know that those board and their minutes were just another
2 way to cover their tracks.

3 Let's go ahead and hear one more excerpt of another
4 MNES board meeting. This is Government Exhibit 406.

5 (Audio played)

6 MR. RAVI: This recording that you just heard makes it
7 clear that the boards themselves knew that they were lying to
8 the outside world about the tribe owning AMG and that it was
9 really Tucker's business.

10 Let's turn to the fourth sham.

11 You heard about other shams, such as the use of
12 titles, like president and CEO for Don Brady and Troy Little
13 Axe, when Scott Tucker, the person ultimately in control of the
14 company, didn't even have one. Common sense tells you why.
15 Tucker knew that if he identified himself as what he was, the
16 real CEO, it would make it impossible to pretend that a tribal
17 official was running this company, and it might result in
18 Tucker having to answer for the illegal interest rates that he
19 charged millions of customers. So instead of naming himself,
20 Tucker named people like Brady and Allison Harris as management
21 of his enterprise, even though Brady did little more than click
22 that magic button, and Allison Harris didn't even know that she
23 was vice president of the company.

24 This is a resolution of the board of directors saying
25 that Allison Harris will continue to serve in the capacity as

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Summation - Mr. Ravi

1 vice president of the company. This is AMG, which was based in
2 Kansas City, and Allison Harris didn't even know that she was
3 that vice president. These tribal resolutions were just
4 another example of form over substance, used to make the tribe
5 appear like it was a real participant when it wasn't.

6 Now that takes us to sham No. 5.

7 From the beginning of these relationships, the tribes
8 themselves viewed the participation as a front to shield Tucker
9 if questions were asked, and that's because they were a front.
10 Many of the ways that you know that the tribes' so-called
11 ownership of these portfolios wasn't worth the paper it was
12 written on is because of the Kickapoo.

13 As Russell Bradley testified, as you can see from
14 Government Exhibit 204, Tucker assigned his portfolio Preferred
15 Cash Loans to be the doing-business name associated with the
16 Kickapoo's tribal shell corporation KLC. But once the
17 relationship with the Kickapoo ended a short while later,
18 Tucker began working with the Santee Sioux and assigned them
19 the same Preferred Cash Loans portfolio, which later became
20 OneClickCash. And then around the same time, Tucker opened a
21 bank account at U.S. Bank in the name of the Modoc's tribal
22 entity, MTE, doing business as Preferred Cash Loans, and he
23 falsely represented himself to be a secretary of that company.

24 Ladies and gentlemen, this tells you all you need to
25 know about the defendants' arguments that the tribes were the

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Summation - Mr. Ravi

1 lenders here and owned the portfolios. Tucker just moved
2 Preferred Cash around to wherever he wanted, whenever he
3 wanted. Could he do that if someone else, like a
4 Native-American tribe, owned it? Of course not. He could do
5 that because the portfolios were his property, and he could
6 maneuver them around as he pleased.

7 Tucker also continued to have the ability to move his
8 portfolios between tribes throughout the conspiracy. As late
9 as 2011, when that news article you heard so much about came
10 out and was published, that led the Modoc tribe to reevaluate
11 whether it wanted to continue its relationship with Mr. Tucker.
12 At that time, even Troy Little Axe offered to help Tucker find
13 a replacement tribe for the 500 FastCash portfolio.

14 Let's pause there for a moment. The fact that both
15 Little Axe and Tim Muir were considering a replacement tribe
16 for the Modoc shows you right there that the tribes didn't
17 actually own anything. Again, just like how Preferred Cash
18 went from the Kickapoo to the Santee Sioux and even to the
19 Modoc, here's another example of Tucker considering moving one
20 established portfolio to another tribe because it was
21 convenient for him at the moment, and he could do that because
22 he is the only one who actually owned and controlled the
23 portfolios.

24 But there are still even more examples of how you know
25 Tucker controlled and operated the business and how the tribes

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Summation - Mr. Ravi

1 were used as fronts to make hundreds of millions of dollars.

2 Let's go through a couple of the examples of many, many emails
3 that show this.

4 This, again, is Government Exhibit 2615. You've
5 already seen this email once today, but I want to show you
6 again, because this email by itself is enough to show that as
7 late as June 2008, right before the so-called AMG merger, when
8 all the activity is running through the tribal accounts, Tucker
9 still believed that MNES, his company from the beginning, had
10 total control, ownership, interest, assignment of all the
11 assets in the portfolios. And this one email proves that the
12 defendants were just using the tribe as a front. Even if this
13 were the only email that we showed you throughout this case,
14 and you know there are plenty more, it is enough to prove the
15 defendants guilty beyond a reasonable doubt of Counts One
16 through Four.

17 Here's now another email, Government Exhibit 2806.
18 This email shows you exactly what Tucker was thinking about the
19 tribes' role in his business, but he emails his business
20 partner here in 2006, and he tells that business partner that
21 he has full authority and control of five sovereign nation
22 entities that are in a position to do about any type of deal
23 that makes sense. Again, this is a confession by Tucker that
24 the tribes are really fronts controlled by him.

25 Here's one more. Here's Tucker exercising his full

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Summation - Mr. Ravi

1 control and authority over the tribes. He writes in the
2 subject line: "I want whatever is needed from the Santees
3 tomorrow. End of story. No more BS. I want the packages sent
4 to the banks, Santees or not."

5 Then he says below: "Seriously, they are out. When
6 we need something, they need to comply." This shows again that
7 the tribes clearly had no control or authority over these
8 businesses.

9 Now we've talked about the three fronts. We've talked
10 about the five tribal shams, examples of various shams that
11 you've seen, and now I want to talk about lies, the ten lies
12 that we went through.

13 There have already been so many lies that have been
14 presented throughout this trial, but I'm going to focus on the
15 ten biggest lies that we haven't already gone through. You can
16 call it a top-ten list if you'd like, but these are just ten
17 ways that you know that Tucker and Muir had criminal intent and
18 fully intended to charge illegal interest rates of up to 1,000
19 percent. Let's go through each one of these lies now.

20 Lie No. 1.

21 It was Tucker's choice that the tribes played little
22 to no role in his payday loan business. And it was because of
23 that choice that Tucker had to have attorneys, like Conly
24 Schulte, submit false affidavits to state courts when the
25 payday loan business, Tucker's business, was being sued for

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Summation - Mr. Ravi

1 charging illegal interest rates. These affidavits were
2 reviewed by Tucker and Muir. That is not in dispute, and these
3 affidavits again had one purpose: to permit Tucker, through the
4 tribes, to falsely assert that his payday loan business could
5 not be sued because of sovereign immunity.

6 As Carolyn Williams, Troy Little Axe and the
7 defendants' own witnesses, Gamble and Lankford, testified, and
8 as you also heard from Don Brady in those recordings, these
9 affidavits contained several lies. Here's one of them from Don
10 Brady in August 2007 that submitted to the California state
11 court after Muir had joined the scheme. You're already
12 familiar with these lies. Let's just go through a couple of
13 them.

14 You know from the evidence that Don Brady did not
15 manage the services or day-to-day operations of the payday loan
16 business. Tucker did. You know that Don Brady did not
17 maintain the books and the records. Tucker did. You know that
18 the portfolios did not operate within the Miami tribe's
19 reservation. They operated in Tucker's offices in Overland
20 Park. And finally, you know that 100 percent of the profits
21 did not go to the tribe. Everything went to Tucker after that
22 1 percent was paid.

23 These were all lies. The only witness who really
24 tried to defend these affidavits was Conly Schulte, even though
25 all of his supposed clients, including Brady, Little Axe, and

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Summation - Mr. Ravi

1 even the Miami tribal entities through a nonprosecution
2 agreement with the government -- all those people -- agreed
3 that they were lies in the affidavits.

4 Schulte was the lawyer who tried to convince you that
5 he was always acting in the tribes' best interests, until he
6 was confronted by all those checks that were signed by Scott
7 Tucker showing that he and his firm had been paid \$16 million.
8 You saw Schulte squirm on the stand when he tried to explain
9 how 100 percent of profits actually meant 1 percent of the
10 revenues in the affidavits he submitted to courts. That
11 doesn't make any sense. 100 percent means 100 percent, plain
12 and simple.

13 You also heard how Schulte lied to courts, not telling
14 judges basic facts, like how he learned about the suits he was
15 defending, because he didn't want to admit that Scott Tucker
16 was behind them. You even heard him dodge the truth on the
17 stand. Confronted with an obvious lie in his own filings, he
18 couldn't defend it as true, but he also couldn't admit to you
19 that he had lied. All he could say is that he could have
20 phrased filings to the courts more accurately.

21 Separate from these affidavits being another example
22 of Tucker telling lies, why is this important? Because these
23 lies showed you that Tucker knew that what the tribes were
24 doing, or what they weren't doing, didn't make his business
25 legal. Use your common sense. Of course Tucker knew that what

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Summation - Mr. Ravi

1 he was doing with the tribes was a sham, and so did Tim Muir.
2 That's why they needed to cover up what was actually happening
3 through false affidavits that overstated the tribes'
4 involvement. And that's why there's not a single mention of
5 Kansas City, so-called servicers or Scott Tucker in any of
6 these affidavits. That's exactly what they were trying to
7 cover up.

8 And you know that there were not just one or two false
9 affidavits submitted. There were more, many more, as you can
10 see on your screen. From 2005 to 2012, there were 15
11 affidavits containing the same lies that were submitted in
12 multiple states by multiple tribal officials. Each of these
13 false affidavits, and we've included the government exhibit
14 numbers as well, was submitted by Conly Schulte, that shows you
15 just what Tucker was paying Schulte for with that \$16 million.

16 You know from the evidence that both defendants were
17 deeply involved in these litigations. Indeed, within just one
18 year of joining Tucker's scheme, Muir got involved in these
19 litigations, and he played this role in helping to hide
20 Tucker's business, and this email showed you that, in speaking
21 to representatives in the state of Colorado in 2007, Muir took
22 on his role in this scheme to help Tucker remain the man behind
23 the curtain.

24 Let's turn to lie No. 2, lies about location.

25 Another way you know that Tucker and Muir knew that

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Summation - Mr. Ravi

1 they were breaking the law were the other lies they made to
2 customers about where they were located. It was company
3 policy, set by Tucker and enforced by Muir, to lie about being
4 in Kansas. As you saw during Grote's testimony, this policy
5 was in place at least as far back as 2005 with the managed
6 shell companies when Tucker coached employees on how to lie to
7 customers, stating that they were located in Nevada when they
8 were really in Kansas.

9 This email here is Tucker directly instructing Grote
10 to lie to customers and tell them that the call switch is
11 located in Kansas and they already explained why the Kansas
12 area code is coming up on caller ID when it's supposed to be in
13 Nevada. The defendant directed the same type of lies for the
14 tribes to use them as cover. Employees were forbidden to tell
15 customers that they were in Kansas. Instead, they had to tell
16 customers Oklahoma or Nebraska, depending on which tribe and
17 the portfolio it was associated with.

18 And this policy of lying was so important that it was
19 grounds for termination. You can see the conclusion here: "Do
20 not disclose our actual location to customers." Remember that
21 you heard from Kelly Rogers that lying to customers was one of
22 the reasons that she left the company.

23 Now, lying to thousands of customers on the grand
24 scale that was the Tucker enterprise created some problems.
25 One problem that you heard about is that sometimes customers on

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Summation - Mr. Ravi

1 the phone would begin to engage in conversations about weather
2 with the call center reps. For a legitimate company, to engage
3 in small talk with customers about weather is not a big
4 problem. But for Tucker's company, it was a big problem.
5 Talking about the weather in Kansas could alert a customer in
6 Oklahoma that the call center rep is not on the reservation in
7 Oklahoma that he or she said that they were.

8 This issue came up so much that Tucker's management
9 team had to make it a company policy to not talk about weather
10 to customers. In fact, Crystal Grote went even further. That
11 solution was to circulate weather forecasts for Miami,
12 Oklahoma, and Niobrara, Nebraska, daily so that call center
13 reps knew what the weather was like near the tribe that was
14 associated with the portfolio they were representing. That way
15 the rep knew what the weather was like in the location that
16 they were pretending to be.

17 Why was location so important that Tucker and Muir
18 directed employees to lie about it? Because Tucker and Muir
19 knew that if charging millions of people illegal interest rates
20 and saying they can't be sued because they are a tribe, they'd
21 better pretend to be located on tribal land. So when, in
22 February 2011, the chief of the Modoc tells a reporter that the
23 payday loan business is located somewhere in Kansas, that's why
24 Muir specifically quotes what the chief said. And when Blaine
25 responds, he says: "Great. Thanks, Chief." You know why he

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Summation - Mr. Ravi

1 said that. The chief was not supposed to disclose Kansas as
2 the real location of the business, because Kansas City is not
3 on a reservation. That's evidence right there that they were
4 trying to hide their business, and that's why Muir advises the
5 Tuckers not to email about it outside his presence so that
6 anything they say is protected by the attorney-client
7 privilege.

8 Let's turn to lie No. 3.

9 You heard that the defendants suggest to you that they
10 believed that the loans they issued were regulated by tribal
11 law and not state law, but you know, based on the evidence,
12 that this is just another lie. There is absolutely no evidence
13 that these defendants or anyone working for them actually tried
14 to enforce a single loan in tribal court. In fact, you heard
15 the Modoc tribal judge didn't even know that the tribe was
16 engaged in payday lending. On the contrary, they just wrote
17 them off at the first sign of trouble. When a customer
18 complained about illegal interest rates, Muir advised that
19 balances be quietly written off when a customer complained.

20 And that's not the only example of the defendants'
21 handling of complaints, as you can see from this email here,
22 when Crystal Cram Grote is saying that Muir and she decided to
23 collect the principal. And that same thing happened when
24 Athena Sanchez complained about illegal interest rates and the
25 New York AG's office got involved. Her account got written

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Summation - Mr. Ravi

1 off.

2 You know that Tim Muir was in charge of the legal
3 department that made these decisions. Think about that. If
4 the defendants are making loans, but if their victim just
5 pushed back hard enough, they didn't even try to enforce those
6 loans, because even they knew that those loans wouldn't hold up
7 in court. And why? Any attempt to enforce them would expose
8 the true owners and managers of this business.

9 Let's go to lie No. 4, false statements to Intercept.

10 Around the same time that the false affidavits were
11 signed by Tucker in 2005, he submitted lies on an application
12 to Intercept, that loan processing company. He lied on one
13 application for his company Pinion Management, which you heard
14 was a second-tier collections business, and he lied for another
15 company of his, Black Creek Capital Corp., one of the companies
16 you saw received millions of dollars from tribal bank accounts.

17 In these applications, Tucker lied about two important
18 things: First, that he never filed for bankruptcy; and second,
19 that he had never been convicted of a crime.

20 You know both of those are lies. As the parties have
21 agreed in a stipulation, Tucker was convicted of mail fraud in
22 federal court for misleading customers in order to obtain fees.
23 He falsely told clients that his company was owned by the
24 well-known banks, Chase, Lloyds and J.P. Morgan, and had access
25 to financing when, in fact, the company was owned by Tucker and

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Summation - Mr. Ravi

1 he didn't have any access to financing. In other words, Tucker
2 lied to customers by telling them that his company was owned by
3 another company when it was really owned by him. And he told
4 lies about who owned his company in order to get money from
5 customers.

6 Now, I expect the judge will instruct you that you may
7 not consider this evidence that Mr. Tucker committed the crimes
8 charged in the indictment, or that Mr. Tucker has any sort of
9 criminal propensity or bad character. You can't use it for
10 that, but you can consider this prior conviction as evidence
11 that Tucker did know full well that in pretending to be a tribe
12 and lying about who owned and managed his companies, he was
13 knowingly evading the law and trying to mislead customers.

14 With respect to that bankruptcy lie, the parties have
15 also agreed that Tucker filed for personal bankruptcy in 1997.
16 And the parties have also agreed that under penalty of perjury
17 in that bankruptcy application, Tucker lied. He failed to
18 disclose his position as president of National Leasing Service,
19 which ultimately became National Money Service, and he also
20 lied under penalty of perjury by failing to disclose that
21 Charles Hallinan had a secured claim against Tucker. Again,
22 you can, and you should, consider these lies as further
23 evidence of Tucker's criminal intent.

24 Let's go to lie No. 5.

25 In 2004 and 2005, in the beginning of Tucker's

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Summation - Mr. Ravi

1 relationship with the tribes, he falsely told U.S. Bank that he
2 served as the secretary of three different tribal entities, one
3 for the Kickapoo, one for the Modoc and one for the Miami. As
4 Russell Bradley, Troy Little Axe and Carolyn Williams all
5 testified, Tucker never served as secretary of any of those
6 tribal entities, nor did the powers of attorney he was given
7 authorize him to represent himself as secretary.

8 Think about that. Tucker is not only claiming to be a
9 member of a Native-American tribe, he's claiming to be one of
10 its officials, just another example of Tucker lying every step
11 of the way to accomplish this crime. And you also saw Muir
12 trying to help explain away these lies in the litigation
13 involving U.S. Bank when he testified yesterday.

14 Lie No. 6.

15 Almost four years after Tucker began using the tribes
16 as a cover, he sold his company Selling Source to London Bay
17 Capital in December 2007 for \$90 million. In signing that
18 agreement, Tucker represented that all of the Nevada shell
19 companies will continue to lend under their own names and not
20 in the names of tribal entities.

21 Members of the jury, this is important, because by
22 this time, in 2007, Tucker had been signing off representations
23 made in court that lending was being done through the tribal
24 entities. But this agreement right here in front of you makes
25 it clear that Tucker was still lending through the Nevada shell

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Summation - Mr. Ravi

1 companies. This is just another reason you know that the paper
2 that the defendants have been relying on throughout this case
3 is just that: paper. You know by Tucker's own representations
4 right in front of you that that paper was meaningless. When
5 Tucker stood to make money, like he did with Selling Source, he
6 didn't even follow his own lies that the tribes were the
7 lenders. He did whatever he wanted in order to make more
8 money.

9 Lie No. 7.

10 In June 2008, within six months of those
11 representations in the Selling Source agreement, Tucker, Muir
12 and lawyers with Conly Schulte's firm came up with the idea to
13 draft paperwork to merge this company CLK, which was named
14 after a Mercedes model, into a new Miami tribal entity, which
15 Tucker named AMG after another Mercedes model. You know what
16 the purpose of this so-called merger was. It was to hide CLK
17 behind a tribe. As every witness at trial has testified and as
18 Tucker himself told Brady in this email, there was no substance
19 to this merger. It was just a name change, from one Mercedes
20 model to another. There was no actual transfer of any assets,
21 just a piece of paper that said there was one. All of the
22 operations of the Tucker enterprise were still controlled and
23 operated in Kansas City, and there does not appear to be a
24 dispute that no payment was made for the supposed merger until
25 two years later.

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Summation - Mr. Ravi

1 Now, I want to talk for a moment about that payment.
2 You saw that about two years after that merger took place,
3 Tucker directed here that a check be written to himself for
4 about \$135,000 from the U.S. Bank account of AMG Services, an
5 account you know from the evidence had been fully and totally
6 under Tucker's control. But you know that this check, this
7 payment, didn't pay for anything. Tucker was just writing a
8 check to himself between two different bank accounts that he
9 controlled. This so-called payment was made to simply make it
10 appear that there had been an acquisition of Tucker's nontribal
11 company CLK by AMG. And the person directing that the payment
12 be made was Tim Muir, so that he could falsely represent in
13 court that CLK had been acquired by the Miami tribe. That was
14 the only reason that Muir wanted that check cut.

15 Another way you know that Tucker was lying about the
16 so-called merger is that in four separate applications to
17 Boardwalk Ferrari, late in 2010, Tucker represented that he was
18 employed as the chairman of CLK Management.

19 The best evidence that Tucker was lying to hide his
20 business is, again, that Tucker didn't even follow his own
21 lies. When he was dealing with the state regulators, he had
22 his lawyers say that CLK doesn't exist, but when he was dealing
23 with the Ferrari dealer, he said he was employed as the
24 chairman of that business.

25 Lie No. 8.

HacWtuc2

Summation - Mr. Ravi

1 You remember hearing testimony from a number of
2 witnesses about the settlement in 2010 with Charles Hallinan,
3 Tucker's long-term partner in payday lending.

4 Now, you heard Pete Smith testify that Charles
5 Hallinan sued Tucker and Tucker settled that lawsuit. That was
6 a personal lawsuit. Tucker agreed to pay \$30 million to
7 Hallinan, which is part of a separate purchase agreement with
8 AMG, not with Tucker. Tim Muir structured that \$30 million
9 payment to come from the U.S. Bank account of AMG, which
10 supposedly belonged to the Miami. And who signed off on that
11 \$30 million payment on behalf of AMG? Vice president Joseph
12 Ragman. You've heard that name before, and you know that J.S.
13 Ragman was a fake person. He never existed. Tim Muir himself
14 admitted that he signed that name.

15 Let me pause there. The general counsel of a
16 billion-dollar company signed the name of a fake person and
17 gave this fake person a fake title on a \$30 million contract,
18 and the best explanation that he could give you was that he was
19 panicked because he couldn't get a signature page from Don
20 Brady? Come on, ladies and gentlemen. This is blatant fraud.

21 You also know that wasn't the only time Muir used that
22 fake name. As Scott Mitchell testified, and Muir also
23 admitted, he told Mitchell to sign Mr. Ragman on contracts,
24 some of which were very large contracts. As you saw document
25 after document, that name was being used for contracts in

HacWtuc2

Summation - Mr. Ravi

1 website domain registrations so they would not come back to
2 Scott Tucker. What kind of general counsel uses a fake person
3 to sign million-dollar settlements and contracts? One who is
4 willing to lie to keep Tucker behind a curtain of lies.

5 Let's go now to lie No. 9.

6 You heard throughout this trial about the lawsuit
7 Scott Tucker v. AMG Services. Just the title of this lawsuit
8 should give you pause. It's Scott Tucker suing AMG, the
9 company that he goes to every day in the morning for work.
10 That lawsuit, like the payment structured for the Hallinan
11 settlement, was orchestrated by Tim Muir. Muir came up with
12 the idea for the lawsuit. Muir hired Pete Smith to represent
13 Tucker and file the papers. Muir drafted the petition of the
14 lawsuit. And Muir celebrated when that lawsuit was successful.

15 The real reason for this lawsuit was to keep Scott
16 Tucker from getting sued for charging illegal interest rates
17 through CLK. To do this, the defendants used a court in Kansas
18 as a tool to bless that sham merger. By getting the
19 certificate of merger filed retroactively, it made that merger
20 look real back in June 2008. That also meant that Tucker could
21 claim that he was under the cover of a tribal entity since June
22 2008, even though there was no actual merger.

23 In order to accomplish this, Tim Muir, on behalf of
24 Tucker, had to tell more lies. He had to make it seem that
25 this was a real or adverse lawsuit in which Tucker was suing

HacWtuc2

Summation - Mr. Ravi

1 AMG because AMG failed to file a certificate of merger. In the
2 draft petition that Muir sent over to Pete Smith, Muir lied
3 about several things: that Tucker could not execute any
4 documents on behalf of CLK absent authorization from AMG, even
5 though Tucker was, in fact, the person that controlled AMG. He
6 said Tucker did not have any right of access to any of the
7 books and records of CLK. He said that Tucker was, in fact,
8 the one in control of those books and records. And he also
9 wrote that despite repeated requests, AMG failed or refused to
10 file a certificate of merger.

11 You know that never happened. Even Conly Schulte
12 admitted to you that Muir made no requests of AMG before the
13 complaint was filed. And Muir couldn't give you a straight
14 answer on how he made that request to Conly Schulte or whether
15 it was one or more than one request. He also even ultimately
16 admitted that this could have been inaccurate. This is an
17 admission that this petition was not true.

18 So what was not mentioned to Pete Smith or to the
19 Kansas court? That Tim Muir was the general counsel for AMG
20 and initiated this lawsuit against AMG, as opposed to his
21 employer and client; that Scott Tucker was in the corner office
22 of AMG, with complete control and authority over its books and
23 records; and that AMG actually paid for this lawsuit against
24 itself.

25 Remember these checks that Tim Muir's law firm paid to

HacWtuc2

Summation - Mr. Ravi

1 Pete Smith for this lawsuit? It was structured this way so
2 that Pete Smith, who represented Tucker, would not realize that
3 the company he filed the lawsuit against actually paid his
4 bills. And Pete Smith's fees were paid from the same AMG
5 account at U.S. Bank from which Tucker paid himself millions of
6 dollars in cash. There's this cash from that account for the
7 Aspen home that paid for the title. You see even more checks
8 that were signed on that same account.

9 All that money was money that Tucker used for the
10 Aspen home, and even the same account that he used to pay
11 himself for the CLK-AMG sham merger, right there. That's that
12 check right in front of you. All of those checks came from the
13 same U.S. Bank account.

14 And you know that Tucker and Muir both knew that they
15 had pulled a fast one on the Kansas court. You saw those
16 emails between Tucker and Muir and Conly Schulte, who all
17 worked together to pull this off. Here Tim Muir's telling
18 Scott Tucker that he'd just dumped untold liabilities which
19 could've gotten to millions or tens of millions of dollars.
20 Here he is talking about how this was the sexual chocolate of
21 his legal career, that he could just drop the mike and walk off
22 stage. And below here talking about showing his aces.

23 Members of the jury, these are the words of people who
24 get away with telling lies to a court in order to protect
25 themselves from being sued by Americans who were cheated out of

HacWtuc2

Summation - Mr. Ravi

1 hundreds and sometimes thousands of dollars each by the illegal
2 interest rates they were charging.

3 That brings us now to lie No. 10, the final lie that
4 we'll go through.

5 About six months after the Tucker v. AMG lawsuit in
6 July 2010, you heard about how Tucker's enterprise began to get
7 scrutinized more carefully. There was an IRS audit of the
8 Miami tribe in 2011 during which Brady made false
9 representations that the Miami were 100 percent owners of the
10 lending company. Those were the same false representations
11 that you heard made Allison Harris, a CPA with 30 years'
12 experience, leave the Miami tribe, because she knew the Miami
13 had no access to the books and records of the lending company.

14 Then there was that story that came out in September
15 2011 about the enterprise, which caused everyone in the tribe
16 to pay more attention to what was going on and to try to learn
17 more about the loan company, in case questions were asked.
18 Here you see one of those examples. This is Troy Little Axe,
19 the sham president and CEO of the lending business for the
20 Modoc asking Tucker for information about the operational
21 guidelines for the loan company, so that he can answer
22 questions if he's asked. You notice that he says here, "It's
23 been a while since we started this thing."

24 The defendants addressed that article that came out by
25 lying to employees. They told employees that, like you, Scott

HacWtuc2

Summation - Mr. Ravi

1 Tucker is just an employee of AMG. And they he even told you
2 that Scott Tucker does not own or operate any online lending
3 business. But you know from the evidence that, of course,
4 Tucker was operating the business. That's a blatant lie.
5 There's no serious dispute that Scott Tucker operated an online
6 lending business and that he was, in fact, the key decision
7 maker for all aspects of the loan business.

8 Then, as time went on in 2011, more people began to
9 ask questions of Tucker, and he kept trying to find ways to
10 dodge them. But even he didn't know how to answer simple
11 questions. Here's a question he's asked: "What is your
12 affiliation with online payday loan companies, and what, if
13 any, affiliation do they have with American Indian tribes?"
14 What was Tucker's answer to Tim Muir, his draft answer? "Not
15 sure on how I would answer that one right now."

16 Then, in No. 4, he's asked, "What work do you perform
17 on reservations, and what percentage of your revenues goes to
18 Indian tribes?" His answer to that one: "All of the revenue
19 goes to owners; it initially does."

20 Ladies and gentlemen, this is another confession. It
21 shows that Scott Tucker was using those bank accounts to hide
22 his money, and the fact that he can't answer simple questions
23 about what affiliation he has with the tribes shows you that he
24 was trying to hide something, and that he knew, and that he was
25 trying to hide it because he knew that what he was doing was

HacWtuc2

Summation - Mr. Ravi

1 illegal.

2 THE COURT: Let me pause for a second.

3 Ladies and gentlemen, Mr. Ravi has about a half an
4 hour, a little over half an hour left in his closing.

5 MR. RAVI: Your Honor --

6 THE COURT: I'm sorry?

7 MR. RAVI: I think we had about an hour.

8 THE COURT: I think we began at 10:15 and it's now
9 11:44.

10 Anyway, I was going to ask you, ladies and gentlemen,
11 would you like a break at this point, or do you want to keep
12 going for another half hour? Keep going?

13 OK. Keep going. We're going to keep going.

14 MR. RAVI: Now, the FTC investigation became public in
15 April 2012, which caused everyone to scramble, but none of this
16 kept Tucker from continuing to use and take his money from bank
17 accounts that on paper belonged to the tribes. It's just that
18 now he needed a better paper trail, because the eyes of
19 investigators were on them, and that better paper trail was the
20 BA Services licensing agreement. As Carolyn Williams, Doug
21 Lankford and Tom Gamble testified, Tucker got the tribes to
22 agree to pay millions of dollars to Tucker's BA Services
23 company in order to license a Tucker version of eCash software
24 for the lending company.

25 Let's listen now to Carolyn Williams and Don Brady

HacWtuc2

Summation - Mr. Ravi

1 talk about that so-called licensing agreement.

2 (Audio played)

3 THE COURT: Please adjust the volume.

4 (Audio played)

5 MR. RAVI: As every witness for the Miami testified,
6 AMG, operated by Scott Tucker, had already been using this
7 eCash software for years. So why did they, all of a sudden,
8 need to license software from Tucker? Your common sense tells
9 you why, because again, Tucker needed a paper trail to take his
10 money out of tribal bank accounts, and that's just what he did.
11 In the end, Tucker was able to take over a hundred million
12 dollars of money from accounts that were supposedly held by
13 tribes, all under the cover of the BA Services licensing
14 agreement.

15 We're now done with the ten lies, ladies and
16 gentlemen. Those are just ten different ways -- ten more
17 ways -- that you can find that the defendants acted for the
18 purpose of charging illegal interest rates. They lied to
19 courts, regulators, banks, loan processors and customers. They
20 also lied to third parties and their own employees.

21 Now, as you know, the Miami tribe hired counsel who
22 were not in Tucker's pocket. The people in Tucker's pocket
23 were Schulte and Muir, but Miami then hired their independent
24 counsel after the FTC investigation, and the tribe realized
25 that it needed to start protecting itself rather than Tucker,

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Summation - Mr. Ravi

1 so they began to identify bank accounts that had been
2 controlled by Scott Tucker, and they discovered all of the
3 extravagant spending from those accounts. Those bank accounts
4 contained tens of millions of dollars from Tucker's operations
5 that were left there by Tucker.

6 But eventually, with all these investigations going
7 on, Tucker couldn't just go and get at those tribal bank
8 accounts on his own. If he did, he would essentially be
9 admitting that the money had been his all along and that he'd
10 been laundering it. The fact that Tucker left money in bank
11 accounts to avoid getting caught is further evidence that he
12 knew he was breaking the law. The Miami eventually terminated
13 their relationship with Tucker, and as you know, they entered
14 into a nonprosecution agreement with the government, in which
15 they agreed to forfeit the \$48 million of the payday lending
16 money that they had found in bank accounts that Scott Tucker
17 had set up in their name.

18 So where are we? We've gone through the three
19 different fronts that Tucker and Muir had used to hide their
20 crimes. We've gone through most of their lies, but before we
21 stop talking about this first set of counts, there is still a
22 fourth front that Tucker used and that he attempted to use in
23 this very courtroom through the witnesses he called to pretend
24 that he wasn't willfully breaking the law, and that is Tucker's
25 use of lawyers to carry out this scheme.

HacWtuc2

Summation - Mr. Ravi

1 As you heard, Tucker talked to lawyers and he used
2 them to carry out his plans, but like his other fronts, he
3 didn't do that because he wanted to follow the law. He did
4 that because he knew that what he was doing was illegal, and he
5 wanted to make it appear that he wanted to follow the law, and
6 Tucker only got cover from lawyers after he had already begun
7 committing his crimes to be able to say later on that he sought
8 out lawyers' advice.

9 Let's first talk about Leonard S. Goodman. You
10 remember him, how evasive he was on cross-examination. To
11 start, the timing is important. Remember that Tucker had been
12 lending under the cover of County Bank since as early as at
13 least 1998. Then, for the first time, in November 2000, Tucker
14 decided to ask for legal advice regarding the County Bank
15 program. It is, therefore, undisputed that Tucker only sought
16 this advice after he had already been using County Bank as a
17 front. That alone tells you that Tucker wasn't honestly
18 relying on lawyers when he used County Bank because he used
19 County Bank for two years before he ever bothered to get
20 advice.

21 What's another way you know that Tucker was simply
22 using these lawyers as cover and not because he wanted to
23 follow the law? Because Tucker was not even honest with the
24 lawyers that he used to paper his file. You can see here that
25 Tucker flat out lied to Goodman and his partner regarding

HacWtuc2

Summation - Mr. Ravi

1 National Money Service not having an office in Kansas, a lie
2 the lawyers passed on to Kansas regulators.

3 Let me pause. Mr. Tucker has no burden to call any
4 witnesses in his defense, but here he chose to put on a person
5 to whom he lied about where his office was located.

6 Let's now turn to the lawyers that Tucker called
7 regarding the tribes. The timing here, again, is important as
8 well. Tucker did not receive any legal advice regarding tribes
9 until at least July 2003 when he first got that opinion letter
10 from Ellen Bachman. But by that time, Tucker had already been
11 making payday loans at illegal interest rates for at least five
12 years. That categorically means that he did not seek or obtain
13 legal advice prior to engaging in this conduct. He did so only
14 after the fact, to find new ways to hide his conduct.

15 Second, not a single one of the letters that you saw
16 from those lawyers told Tucker that what he was actually doing
17 was legal. In fact, it was just the opposite. Every lawyer
18 told him that the tribes cannot simply be used as a front or
19 conduit.

20 This is Ellen Bachman's letter telling him that if the
21 tribes were used solely as a conduit, it would of course the
22 ability destroy for them to claim sovereign immunity.

23 Here's a letter from Cliff Cohen that specifically
24 told Tucker that based on what he knew of Tucker's business,
25 there could be a finding that no tribal enterprise is actually

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Summation - Mr. Ravi

1 conducting the lending business. And even Conly Schulte, who
2 Tucker paid millions of dollars and was part of the scheme,
3 advised Tucker that the way Tucker was doing business did not
4 adequately reflect the tribes actually adding value to the
5 business.

6 Schulte also advised that the tribes can't simply
7 appear to be a front used to market exemption from state
8 regulation, which as you know from the evidence, is exactly
9 what Tucker was doing. But Tucker did not attempt to follow
10 any of this advice, even from Conly Schulte. He continued to
11 keep his business the way it was for more than a decade, with
12 him controlling and operating everything and the tribe
13 receiving their 1 percent. And he did that because he didn't
14 want the tribes really to add any value. He wanted to be the
15 one to make decisions over his lending company.

16 Finally, I just want to focus you on this email from
17 Cliff Cohen, that shows you, if you read, "my suggestions are
18 not limited to creating a bigger file; it has more to do with
19 substance than form."

20 Throughout this trial, Tucker has been trying to
21 convince you that because tribal corporations were formed and
22 tribal resolutions and ordinances were passed this somehow was
23 not a sham. Use your common sense. You know the difference
24 between form and substance, and so does Tucker. He was
25 specifically advised on that in 2004, and yet he chose to

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Summation - Mr. Ravi

1 ignore that advice. These lawyers are not a defense. They're
2 simply more evidence of Tucker's guilty state of mind.

3 I want to now talk to you a little bit about Tim
4 Muir's testimony. As the judge will instruct you, a defendant
5 has no obligation to present any evidence at all. Only the
6 government has the burden of proof, and that's a burden that we
7 embrace.

8 Here, Timothy Muir made his choice to testify in his
9 defense and so you can, and should, scrutinize his testimony.

10 Now, you heard about all the advice that Scott Tucker
11 got, that he couldn't just use Indian tribes as a conduit for
12 his business. Well, Muir sat through this entire trial and
13 heard all of the evidence showing that the tribes were exactly
14 just that, a conduit or a front. So Muir got up on the witness
15 stand and he said the only thing he could, and he came up with
16 his own legal theory: that based on supposed Internet research
17 that he'd done, he believed the businesses were legal,
18 regardless of the fact that the tribes hadn't done anything.

19 But if he really believed that, ladies and gentlemen,
20 why was he involved in reviewing false affidavits claiming that
21 the tribes operated and managed the business on tribal lands?
22 If it didn't matter that Tucker played such an important role,
23 why was he helping hide Scott Tucker behind that curtain?

24 Now, Muir had an opportunity to try to go and explain
25 away all the mountains of evidence in this case. He had an

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Summation - Mr. Ravi

1 opportunity to explain all the lies and incriminating
2 statements and all the emails he sent and received. But
3 instead, he just glossed over the bad parts. He gave no
4 explanations whatsoever for the incriminating things he did
5 say. And when he was pressed to explain what he did on
6 cross-examination and during his testimony, his story fell
7 apart.

8 When Muir was asked the simple question of whether
9 Tucker operated the lending business, he couldn't even answer
10 that question. He said it was a legal concept. Every single
11 other witness in this case, lawyer or not, knew how to answer
12 that question. It was Scott Tucker, but Muir didn't know how
13 to answer at first, so he dodged it. Then, when he was asked
14 about whether it was a requirement that some act important to
15 the issuance of the loan take place on tribal land, Muir
16 initially said yes, but when he was asked that question ten
17 seconds later, he said no. Muir couldn't figure out what
18 answer would best help him, so he switched gears from moment to
19 moment throughout his testimony.

20 Finally, when Muir was asked about some trademark
21 issues that he'd put to bed to sort of make it easier for the
22 tribes to pretend to be the lenders, Muir first said that he
23 didn't think the trademarks were a problem; that should be
24 corrected. Then, when he realized that his answer didn't
25 really make any sense, Muir was forced to admit that he had to

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Summation - Mr. Ravi

1 change his answer.

2 Members of the jury, at the end of the day, the Tim
3 Muir that you saw on the stand is the same Tim Muir that you
4 saw in those emails, like the one in which he was holding an
5 annual meeting just to say they had one, or he was discussing
6 fake names in documents, or he's talking about dumping millions
7 in liabilities. He was always twisting the facts in a way to
8 make it work, and that's how you know that his testimony is
9 just another cover-up for the crimes that he committed.

10 Going back to the elements, these are the four counts
11 for collection of unlawful debt, and I'm going to move on now
12 to the fraud counts.

13 These are the fraud counts and the instructions that
14 the judge will give you.

15 The issue here is whether there was a scheme to lie to
16 customers about the true cost of their loans and the identity
17 of the lender, and also whether the defendants were part of
18 that scheme. Based on the evidence in this case, you know that
19 the answers to both of these questions has been proven beyond a
20 reasonable doubt.

21 You have seen and heard throughout this trial about
22 the four boxes on each of the loan disclosures called the Truth
23 In Lending Act, or TILA, boxes. There are separate crimes
24 under the Truth In Lending Act that we'll go through when we
25 get to those counts, but for now, I'm focusing on the lies in

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Summation - Mr. Ravi

1 these TILA boxes as the basis for the fraud counts.

2 These boxes are supposed to provide the various
3 borrowers with important information about their loans. For
4 example, here, for Richard Hamner, who you heard from on the
5 first day of trial, the defendant charged \$90 for a \$300 loan
6 with the total payment being \$390. It's clear as day how much
7 he needed to pay back. There's no ambiguity whatsoever. But
8 you know that the loans issued by the defendant's company
9 didn't actually work the way they were represented in these
10 boxes. They were specifically structured so that the loan
11 would be automatically renewed, with only the finance charge
12 being withdrawn during the first four pay periods and with no
13 principal being paid until the fifth renewal.

14 You see how it worked here for Amy Weatherwax, where
15 they were taking out only the \$150 finance charge for her \$500
16 loan that was supposed to cost a total of \$650. But as you can
17 see here, she ended up paying \$1,860, and the same thing
18 happened to each of the victims that you saw and heard from
19 throughout this case. None of them agreed to have their loan
20 terms automatically renewed. None of them agreed to pay more
21 than the total amount that the defendant's loan disclosures
22 said it would cost them. And you already know from the
23 evidence that we've gone through that Tucker and Muir knew that
24 customers didn't understand their loan disclosures.

25 In emails that were sent to Tucker from as early as

HacWtuc2

Summation - Mr. Ravi

1 2006, Tucker was specifically told that 90 percent of the
2 issues we have with customers stem from them not understanding
3 the process of renewals and pay downs; they were constantly
4 battling with them. Of course Tucker knew that customers were
5 being misled about renewals, and Tim Muir did too. He admitted
6 that on the stand, that he knew that customers were being
7 confused by the renewal process.

8 But despite the number of complaints increasing over
9 the years, Tucker and Muir did not make any changes to the
10 automatic renewal structure of the loans, and they did not even
11 change the confusing language under the TILA boxes, not at all,
12 because Tucker and Muir intended to deceive customers about
13 these loan terms. You know that because when they wanted to,
14 they could easily explain them, like they did for their own
15 employees. But then this is what they gave to customers.

16 The defendants could have given the same clear
17 explanation to their victims, but they didn't, and you know
18 why. As Crystal Grote testified, Tucker and his management
19 team specifically encouraged employees to get customers to pay
20 down their loans over time rather than pay the loan off in
21 full. That was because they made more money with the automatic
22 renewals. This goes to the overriding theme of the defendants'
23 conduct. Every action they took, or did not take, was
24 calculated to make more money.

25 Simply put, the TILA boxes were false. Muir admitted

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Summation - Mr. Ravi

1 this on the stand. He acknowledged that the loan disclosures
2 for a \$300 loan always said that the total of payments was
3 \$390. Then when Muir was asked what the total of payments
4 actually was, he admitted that, under the terms of the loan, it
5 would be \$975.

6 You also know from his testimony that he was aware
7 that customers were misled by those boxes and that he, as the
8 general counsel, could have proposed changes but chose not to
9 do so. That shows you that he intended to deceive customers,
10 and that makes him guilty of fraud. It's that simple.

11 Now, the defendants have tried to point to that fine
12 print language under the TILA boxes to try to explain the
13 baldfaced lies.

14 First, even if that language was crystal clear, which
15 it wasn't, it doesn't make the disclosures in the boxes any
16 less false, and borrowers had a right to rely on those TILA
17 boxes to figure out how much loans would cost. Indeed, that's
18 the reason for the boxes in the first place. You've seen that
19 fine print. You've read it, and it is far from clear. It
20 simply doesn't make sense. That language doesn't explain to
21 anyone that the loans will be automatically renewed four times
22 without any pay down in principal, and it does not clearly
23 explain how a customer could avoid having that happen. The
24 fact that the defendants agreed to bury all that confusing
25 language below the TILA boxes just confirms, again, that they

HacWtuc2

Summation - Mr. Ravi

1 were lying.

2 Finally, Richard Hamner, Amy Weatherwax and Andy
3 Leibenguth testified that they were told that they had to
4 continue to pay money to the defendant's business because it
5 was owned by a tribe and that it was not subject to state law.
6 You know by now that those statements were blatantly false.
7 I'm not going to go through all the evidence again. That's
8 another lie, and as you know, many of the defendants' victims
9 knew that state law was supposed to protect them, and they even
10 included those state laws in their complaints. So the
11 defendants just lied and said it doesn't apply.

12 You know this to be true because of scripts that were
13 approved by Muir, which employees were told to tell customers
14 that they had to pay back their loans, even if they were in
15 violation of state law, because the defendant's company was
16 owned by a tribe. This was company policy, and you saw this
17 email that was sent to Mr. Leibenguth about how the company
18 told him that his loan agreement was governed by the laws of
19 the Santee Sioux.

20 (Continued on next page)

HAC8TUC3

Summation - Mr. Ravi

1 MR. RAVI: As Muir admitted, the loan disclosures
2 prior to 2011 didn't even mention a tribe or a tribal
3 corporation, so there was no way for a customer to know that
4 they were agreeing to tribal law. This caused victims like
5 Richard Hamner to feel like they were trapped.

6 The defendants surely knew that their victims couldn't
7 afford a lawyer to help them with these problems. Just more
8 evidence that you know the defendants were lying about their
9 loan terms.

10 Based on this evidence regarding the fraud counts,
11 ladies and gentlemen, and everything else that you have seen
12 throughout this trial, there is overwhelming evidence that the
13 defendants lied to customers about the true cost of the loans
14 and about being owned by a tribe in order to trick them into
15 paying more money.

16 I am going to turn now to the money laundering counts.
17 That's the third category of crimes that we have talked about.

18 Now, if you find the defendants committed wire fraud,
19 which we submit you should, based on the evidence that's been
20 presented, then the defendants are also guilty of money
21 laundering.

22 These are the instructions on money laundering in
23 front of you. The main dispute in these elements is the fourth
24 element, whether the defendants engaged in a financial
25 transaction with the intent to promote the carrying on of

HAC8TUC3

Summation - Mr. Ravi

1 specified unlawful activity, namely, advertising and generating
2 leads for in a fund, new payday loans.

3 As Judge Castel, I expect, will instruct you,
4 specified unlawful activity refers to wire fraud.

5 So there are two types of money laundering: Promotion
6 money laundering and concealment money laundering.

7 Let's go through first how the defendants are guilty
8 of promotion money laundering.

9 Plain and simple, the money that Tucker's business
10 received from customers by defrauding them was used to fund new
11 loan transactions, meaning new frauds.

12 As Ms. Espinoza testified about this slide from her
13 presentation, loan payments that came in from payment
14 processors, such as Intercept, were deposited into bank
15 accounts under Tucker's control. And then that same money was
16 used to fund new loans.

17 And these transactions happened on a daily basis. For
18 example, here in April 2013, for one of the bank accounts, in
19 the name of Red Cedar, about \$8.7 million came into the
20 account, which represents the loan payments, and about \$6.1
21 million went out of the account, which represents funding for
22 new loans.

23 You know from the evidence we just discussed regarding
24 the wire fraud, the money coming in was money that was paid to
25 customers that were lied to about their loan terms. And

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Summation - Mr. Ravi

1 because there were no changes to any of the loan disclosures
2 through August 2013, you know that the new loans were funded
3 using the same money that was extended on the basis of those
4 same misleading loan disclosures.

5 Both Tucker and Muir were integral to these new loans
6 being funded, and that's why they are guilty of promotion of
7 money laundering.

8 You also know that they are guilty of promotion of
9 money laundering for another reason. Here you see Ms.
10 Espinoza's presentation about \$412 million that was given to
11 Selling Source.

12 As you heard from Alton Irby's testimony, Selling
13 Source, specifically, Partner Weekly, was involved in selling
14 leads to the defendants' business so that they could issue new
15 loans to these borrowers. Because the money used to pay
16 Partner Weekly came from the portfolio accounts that received
17 the same loan payments that were obtained through the wire
18 fraud, the money that was paid to Partner Weekly was therefore
19 used to promote the fraud by obtaining the names of new
20 borrowers to defraud.

21 Both Tucker and Muir facilitated these payments that
22 were being made to Partner Weekly in order to buy leads to fund
23 new fraudulent loans. This evidence proves that the defendants
24 are guilty beyond a reasonable doubt of promotion money
25 laundering.

1 Let's now turn to concealment money laundering.

2 Concealment money laundering is what you may think of
3 when you hear about money laundering. It's about hiding the
4 profits from crimes. It also has four elements, and again,
5 only the third element is really in dispute. Excuse me. The
6 fourth element is really in dispute. And that requires that
7 the defendant engaged in a financial transaction knowing that
8 the transaction was designed to conceal or disguise the nature,
9 location, source, ownership, or control of the proceeds of the
10 wire fraud.

11 Members of the jury, there is overwhelming evidence of
12 the defendants' guilt when it comes to concealment money
13 laundering. Earlier in the summation we talked about the
14 lengths that the defendants took to use tribes as fronts in
15 order to hide Mr. Tucker's business and his money. One big
16 part of that whole scheme was Tucker's use of bank accounts
17 that were in the names of tribal entities, but that were
18 actually controlled by Tucker and used as his own accounts.

19 Ms. Espinoza showed you that Tucker used those
20 accounts like they were his own piggy banks, with over \$10
21 million going to his brother Blaine and over \$380 million going
22 to himself and his wife and their related entities. As you
23 know, Tucker spent that money on everything from Ferraris and
24 his racing team, to paying for his jet expenses and his
25 personal taxes.

HAC8TUC3

Summation - Mr. Ravi

1 There is no real dispute regarding any of the
2 spending, which together with all the other evidence we went
3 through shows you that Tucker, and only Tucker, was fully in
4 control of these accounts, no matter what name was on them.
5 His use of these accounts for personal spending is devastating,
6 ladies and gentlemen, for concealment money laundering.

7 I want to play now briefly Government Exhibit 410,
8 which shows you that you know it's true because Don Brady told
9 you it was true.

10 (Audiotape played)

11 MR. RAVI: Don Brady told you that the point of
12 Tucker's money sitting in bank accounts, nominally held by the
13 Miami, was to launder it. If Don Brady understood that, you
14 know that Tucker and Muir did too. They are the ones who set
15 it up. But let's go through a couple of examples of how you
16 know that Tucker and Muir are guilty.

17 As Ms. Espinoza testified, Tucker bought a Ferrari for
18 \$300,000 in February of 2011. But in order to pay for that
19 Ferrari, he didn't just cut a check from his personal bank
20 account. He cut a check from five different tribal accounts,
21 in the amount of \$100,000 each, on February 24, 2011, and then
22 he deposited that into a Level 5 Motorsports account. You can
23 see Scott Tucker's signature. Then the very next day, he cut a
24 check from the Motorsports account to Boardwalk Ferrari for
25 \$300,000.

HAC8TUC3

Summation - Mr. Ravi

1 Ladies and gentlemen, there is only one reason why
2 Tucker funneled the money through the Level 5 account rather
3 than paying Boardwalk Ferrari directly from the portfolio
4 accounts. Use your common sense. Because Tucker was trying to
5 conceal the fact that \$300,000 for his Ferrari was coming from
6 accounts that were supposedly owned by tribes, but they were
7 really owned and controlled by him.

8 Finally, another example of concealing money
9 laundering are those checks that were cut to Pete Smith's law
10 firm for the *Tucker v. AMG* lawsuit. Within days of Muir
11 cutting those checks, Tucker signed checks from AMG's bank
12 account to Muir's law firm for the exact same amount. These
13 payments to Pete Smith did not come directly from AMG for a
14 simple reason. It would have raised suspicion that AMG was
15 paying a lawyer to file a lawsuit against itself. So Tucker
16 and Muir came up with the solution, funnel the money through
17 Muir's law firm to disguise the source of the funds, and that's
18 what they did.

19 Based on all of this evidence, the defendants are also
20 guilty of concealment money laundering, as well as the
21 conspiracies to commit money laundering.

22 So we have gone through the first three categories of
23 crimes. We just have one more. The Truth in Lending Act
24 violations.

25 There is one count here for each of the five loan

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Summation - Mr. Ravi

1 portfolios you have heard about throughout this trial. And
2 Judge Castel will instruct you, under TILA, loan disclosures
3 must accurately reflect the terms of the loans. If the
4 defendants knowingly and willfully gave materially false and
5 inaccurate information regarding the finance charges and the
6 total payments for these loans, then they are guilty of the
7 TILA counts as well.

8 Unlike the fraud count, there is no specific intent to
9 defraud that is required for these. In other words, you don't
10 need to make a finding that the defendants acted to deceive
11 customers. All you need to find is that those TILA boxes were
12 false.

13 You know from the evidence that we have already gone
14 through that, of course, they lied about that information and
15 that they knew it was false. End of story. The defendants are
16 guilty of these five counts as well beyond a reasonable doubt.

17 Now, at the end of the verdict sheet, you will see
18 another question that you need to answer if you find the
19 defendants guilty of Counts Two through Four. This question
20 asks whether the government has proven beyond a reasonable
21 doubt that, at the time of the collection of any of the loans
22 that you found as the basis of a guilty verdict on Counts Two
23 through Four, that the lender in fact was Defendant Scott
24 Tucker or an entity owned or controlled by him. You know what
25 the answer is to this question, and you know that the answer is

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Summation - Mr. Ravi

1 yes, an obvious one.

2 Here below on this slide are some of the factors that
3 the judge will provide to you in the instructions that you
4 should consider when you're determining that Scott Tucker was
5 the lender. And you know, again, that the answer here is yes.

6 Tucker was the initial source of money for the loans.
7 You know that from the agreements themselves. No one else put
8 a single dollar up for any of the loans at issue in this trial.

9 Tucker, and only Tucker, took on the risk of
10 nonpayment of the loans. That can't reasonably be disputed.

11 And no one else but Tucker directed the day-to-day
12 operations and activities of the Tucker enterprise. He made
13 all the lending decisions. He controlled the bank accounts.
14 He made all the profit, after the tribes were paid their 1
15 percent. He hired and fired employees. He maintained the
16 books and records. And he managed advertising and solicitation
17 of customers, as well as third party relationships.

18 Every single one of these factors point to yes.

19 Members of the jury, you have listened to me patiently
20 as we have gone through all of this evidence. I am going to
21 sit down very soon. Let me just remind you of where we
22 started. I told you that this is a simple case at heart.
23 Tucker and Muir cheated millions of hard-working Americans out
24 of billions of dollars by charging them illegal interest rates
25 and lying to them about the true cost of their loans. And

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1 because they knew what they were doing was illegal, they used
2 front after front, sham after sham, and lie after lie to cover
3 up their identity, hide their business, and launder their
4 money. There is simply overwhelming evidence of their guilt
5 for all these crimes.

6 I would like to leave you with an image in your head.
7 Think back to when Scott Mitchell told you about that tank that
8 Scott Tucker had bought for Muir during the course of the
9 Colorado state litigation. That tank was so big that it came
10 in on a semi and cars had to be moved to park it. There was an
11 inscription on that tank, that I am sure you remember, that
12 Tucker had put there for Muir on this gift. It read,
13 "FUMAGFST." You know what that means. FU, Mr. Attorney
14 General, from Scott Tucker.

15 Ladies and gentlemen, these two men never elected to
16 follow the law. Instead, they intentionally broke the law,
17 they mocked the law, and they hid from the law. And they did
18 all of that in order to cheat hard-working Americans out of
19 millions of dollars.

20 If you look at all of the evidence you have seen and
21 heard, and you weigh it and you apply your common sense to the
22 facts in front of you, you will reach the only verdict that is
23 consistent with the evidence, the law and your common sense:
24 That the defendants here are guilty as charged.

25 THE COURT: Thank you, Mr. Ravi.

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Summation - Mr. Ginsberg

1 Ladies and gentlemen, we will take a ten-minute break.
2 You're still not allowed to discuss the case. There is more to
3 come, in terms of the closing arguments, and we will pick up in
4 ten minutes.

5 I had hoped that your lunch might be here already. I
6 am advised it's not. But what we will do is we will do Mr.
7 Tucker's summation. Then we will break for a short lunch
8 period today, because your lunch will be in the jury room, and
9 I don't want anybody to get ingestion, maybe a half hour or
10 something like that, and then we will pick up with Mr. Muir's
11 closing argument. And then, as I indicated, there will be a
12 short rebuttal from the government.

13 All right. Thank you.

14 (Jury exits courtroom)

15 THE COURT: I am advised that the jurors' lunch has
16 arrived. I am suspecting that the request is that they be
17 allowed to eat lunch before beginning the defendants'
18 summations. If the defendants have a preference that they
19 would rather start right now, that's fine with me also.

20 MR. GINSBERG: Actually, I would.

21 THE COURT: Prefer to start right now?

22 MR. GINSBERG: If you want to explain to the jury. I
23 don't want the jury to be hungry in the middle of my summation.

24 THE COURT: I don't think an explanation is what is
25 called for. I told them it was a ten-minute recess. So one

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Summation - Mr. Ginsberg

1 moment, please.

2 (Pause)

3 THE COURT: Bring our jury in, please.

4 (Jury present)

5 THE COURT: Mr. Ginsberg, you may proceed when you're
6 ready.

7 MR. GINSBERG: Thank you, your Honor.

8 Good afternoon.

9 First, after hearing the government's summation, I
10 just want to begin by saying this is anything but a simple
11 case. We have been here for four weeks, heard 25 witnesses, a
12 lot of testimony, a lot of documents, a lot of issues. It's
13 not simple. The government may want to make it appear simple
14 so that you don't look at all of the evidence in the case and
15 think about all the testimony in the case, but it's not simple.

16 Before I go on to the things I want to say about the
17 evidence and testimony, you have been thanked many times during
18 the course of this trial, particularly by the judge, for the
19 attention you have been paying to this case. We all sit here
20 and we look over at you. You look over at us. We don't really
21 know each other that well. We don't know what you're thinking.
22 You don't know what we are thinking, except for when we are up
23 there asking questions. So it's hard to judge sometimes what
24 we are doing, what's taking place, how it's affecting
25 everybody.

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Summation - Mr. Ginsberg

1 But the most important thing is that we give you our
2 thanks, because without you, without jurors who are willing to
3 serve, without jurors who were chosen because they can be fair
4 in a case like this, all the rules that we have that apply to
5 trials -- the fact that defendants are presumed to be innocent,
6 the fact that the government has to prove each count and each
7 element beyond a reasonable doubt -- all of those rules and
8 others mean nothing. They come from, really, the Constitution,
9 at the heart of it, but now you are the Constitution. You give
10 life to the Constitution by sitting here patiently listening
11 and ultimately making a decision. Without that, without people
12 like yourselves doing that, those concepts would have no real
13 meaning.

14 So we all thank you for everything that you have given
15 to us, the time, the patience and the attention.

16 Now, there are things that you heard during the course
17 of this trial about Scott Tucker that you may not particularly
18 like, and I'm not talking about proof about the charges
19 themselves in this case. I am talking about things that you
20 heard about past events, maybe pictures or discussions of
21 tanks, which we just heard about, or cars, or planes, or
22 houses. But that's not a substitute for evidence and proof
23 beyond a reasonable doubt.

24 Frankly, a lot of that are distractions from the real
25 evidence. It doesn't mean because someone made a lot of money

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Summation - Mr. Ginsberg

1 that he is guilty of a crime. It doesn't mean, as the judge
2 has told you, and he will tell you again during jury
3 instructions, that because in the past he has done some things
4 that were wrong, he is guilty of the crimes charged in this
5 case. This is not about whether or not you like Scott Tucker,
6 whether you like the way he lived, or the things that he had,
7 or whether he was boastful or aggressive. This is about
8 evidence and proof.

9 You have to, as you told us at the beginning, you have
10 to focus on what has been presented to you, and particularly
11 focus on whether the government has proven beyond a reasonable
12 doubt that Scott Tucker is guilty of each of the charges and
13 the elements of the charges. And the judge will explain that
14 to you.

15 You will also hear, as you have heard to some degree
16 already, when the judge charges you on the law, that there are
17 various defenses to the charges in this case. Beside the fact
18 that the government always has to prove the defendant's guilt
19 beyond a reasonable doubt, you have heard during the course of
20 this trial about lawyers, many lawyers that Scott Tucker
21 consulted with, beginning from Leonard Goodman and going up
22 through Tim Muir.

23 You have heard what advice he got. You have heard
24 what he relied upon. And also, and probably most importantly,
25 whatever took place in this case, however aggressive it was,

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Summation - Mr. Ginsberg

1 however much money Mr. Tucker earned from the business, that
2 does not make him guilty of the charges. And he had no intent,
3 no intent to deceive or defraud. He did things that were
4 inappropriate. There were documents signed that probably
5 shouldn't have been signed. There were e-mails written with
6 things said that didn't sound so terrific. There was bragging.
7 There was boasting. But again, that does not prove that he is
8 guilty of the charges in this case.

9 But I think what is really critical, the government
10 talked about some of the witnesses who testified here, and the
11 government chose which witnesses they wanted to call. They
12 chose which witnesses they were willing to give cooperation
13 agreements to. They chose to give an agreement to the Miami
14 tribe so that the Miami tribe, or the entities under the Miami
15 tribe, would not be prosecuted. They chose to do those things,
16 and they chose to call those witnesses. And what they are
17 asking you to do now, as they went through their summation, and
18 frankly during the course of the case, is they have almost
19 asked you to pick witnesses like Adrian Rubin, Carolyn
20 Williams, Crystal Grote, and Scott Mitchell, four examples, as
21 people who they ask you to believe. They ask you to believe
22 that those witnesses are honest, truthful people, who testified
23 in an honest, truthful way when they got on the witness stand.

24 And then, on top of that, what they suggested in their
25 summation is that Leonard Goodman, a 75-year-old retired

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Summation - Mr. Ginsberg

1 lawyer, Cliff Cohen, Conly Schulte, the defense witnesses,
2 somehow were all part of this grand conspiracy. Because there
3 is no way you can see it otherwise. If they are telling you
4 that Adrian Rubin is truthful about County Bank, and he claims
5 that the County Bank was running a fraudulent lending
6 operation, then what does that make Leonard Goodman? It makes
7 him a liar. It makes him part of the conspiracy.

8 So they are asking you to believe those witnesses that
9 they put up, who we know from their past and from the testimony
10 in this case are not honest, truthful, believable people. And
11 you can't walk away from that. We didn't give those
12 cooperation agreements out. We didn't tell Crystal Grote,
13 after four years of speaking to her attorneys and threatening
14 her to bring all the charges that were brought in this case
15 against Mr. Tucker and Mr. Muir, we didn't tell her, well,
16 after four years now, we will make a better deal with you,
17 because we want you to testify. So what we will do is if you
18 agree to plead guilty to one charge, that carries a lesser
19 penalty, and we will drop the forfeiture allegation that was in
20 the first proposed cooperation agreement, if you will agree to
21 that, then we will sign you up as a cooperator.

22 That was a pretty good bargain for her, a pretty big
23 motive and incentive. Instead of facing all those charges that
24 were put up here on the screen in front of you, the 14 charges,
25 she has one charge.

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Summation - Mr. Ginsberg

1 Adrian Rubin, I don't know what you can say about him.
2 The government comes up here now and wants you to believe what
3 he said about the County Bank model, when not only was Leonard
4 Goodman a witness, who came from a practice in a big firm in
5 Philadelphia, but if he is lying, and he is part of this
6 conspiracy, then all the people that Leonard Goodman worked
7 with at the County Bank -- the president, the compliance
8 officer, the regulators -- were they all part of that too? Are
9 we supposed to believe Adrian Rubin's word? And that's where
10 the government begins. They start off talking about the County
11 Bank model being fraudulent, and then they take you right up to
12 the end.

13 Well, it wasn't fraudulent. You heard that there are
14 rules that permitted the County Bank to make the loans that it
15 made. You saw the agreements. These weren't agreements
16 written by Scott Tucker and given to the bank. These were
17 agreements that the bank prepared. These were agreements that
18 required compliance with the bank's rules and regulations.

19 But Adrian Rubin, a man who said for 30 years he has
20 had a problem with honesty, is who they put up here to start
21 off their case and to begin this progression of telling you how
22 all of these things, these three different models, were
23 illegal. Can you really believe anything Adrian Rubin says?

24 And they had him on the witness stand for a long time.
25 Partly because he had done so many bad things in the past, it

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Summation - Mr. Ginsberg

1 took a while just to get through that part of his testimony.
2 Don't forget, he is the one who told us how precious his
3 children were to him, and then got his own sons involved in a
4 credit card scheme. So can he really be believed? If he put
5 his own children in harm's way, deceived them, used his
6 in-laws' names, his best friends' names to do the things that
7 he did, and now you're being asked, believe him because he
8 signed a cooperation agreement.

9 And it's not the first time he has gotten a
10 cooperation agreement. This is the way that man operates. He
11 operates by committing crimes and then running to the
12 government and saying, well, I'll cooperate, I'll help you out,
13 and he gets his deal. And the first time he served a year and
14 a day and he told the judge how he is going to change his life.
15 And as he was telling the judge that, he was thinking of his
16 next scheme. And then he got involved in one crime after
17 another. And then he came back to the government, after he was
18 charged again, to get a cooperation agreement again. Why?
19 Because he is a truth-teller? Because he is an honest man?
20 No. Because he is a desperate man.

21 And he sat on that witness stand, and maybe you had a
22 different view or impression than I did of him, but he sat
23 there, I think he had a decent tan, he looked a little smug.
24 He told us that even though he has been convicted now twice,
25 even though he had forfeited money because of his tax problems

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Summation - Mr. Ginsberg

1 and other problems, he was still a relatively wealthy man. So
2 for all we know, he is just going to continue to do it.
3 Commits crimes, makes deals, keeps money, keeps going on, and
4 then gets up here on the witness stand. He is the biggest
5 example of somebody who is not a truth-teller.

6 There was also Carolyn Williams, who appeared to be
7 telling this sympathetic story about how she got this job with
8 Don Brady, and because she sat outside of his office in a
9 chair, could overhear conversations, and would occasionally
10 look at documents. But when she was asked on
11 cross-examination, did you read them, did you pay attention?
12 No. I saw a letter of intent, but I didn't really pay
13 attention to what it said. I saw a service agreement, but I
14 really didn't pay attention to what it said.

15 And she testified that from 2003 to 2005, while she
16 was working there, she developed this view that there was
17 something wrong with the lending operation. She knew almost
18 nothing about it. And when on cross-examination she was
19 pressed to answer about what she saw, what she knew, what
20 meeting she attended, she didn't know very much. She didn't
21 pay attention to the documents. She didn't attend meetings.
22 And in fact, she all of a sudden, like many of the other
23 witnesses on cross-examination, all of a sudden her answers
24 were, well, that was 2003 to 2005, it's a long time ago. I
25 really can't remember it that well.

1 That's not what she said on direct examination. And
2 why does that happen? Because witnesses sit and prepare with
3 the government and they know what they are going to be asked,
4 and on cross-examination, when they don't know what the
5 questions are going to be, or they don't have the answers, the
6 truthful answers, or they are getting asked questions that are
7 going to back them into a corner, the first thing they always
8 say is, well, that was a long time ago, I just don't recall.
9 Which is exactly what she did. And it's all in the transcript.
10 No problem on direct examination, big problem on
11 cross-examination. And I will get back to talking about her a
12 little bit later.

13 Crystal Grote. Crystal Grote is someone who also got
14 a cooperation agreement, and she got that cooperation agreement
15 because she made a false statement and lied. And that lie was
16 about the weather reports. And the government talked about it
17 in summation as if that was a business-wide issue that
18 everybody was doing, when in fact she told us an employee in
19 her group came to her, gave her this idea about the weather
20 reports, and she said, I think that's a great idea, and she
21 started telling other people to do that same thing. Not the
22 other groups, not the other hundreds of people who were working
23 there, but Crystal Grote did that.

24 Now she comes on the witness stand and tells us, Oh,
25 this was all scam, sham, fraudulent, embarrassing to her. So

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Summation - Mr. Ginsberg

1 what is she doing when she is working there? Now it's
2 different. Why is it different? She got her cooperation
3 agreement. She got her bargain. All those other charges
4 disappeared.

5 Finally, for purposes of making this comparison, I am
6 not sure I ever saw a witness like Scott Mitchell before, who
7 the government called, the government prepared, went over his
8 testimony with him, met with him for hours. He gets on the
9 witness stand. He tells you that he was working since about
10 2004 at Scott Tucker's companies. He tells you all the things
11 that he learned and saw and heard while he was there during
12 2004 and 2005 and 2006, and how he knew how the business was
13 being operated and the things that were being done wrong.

14 And then on cross-examination he is asked a very
15 simple question: Is it possible that you didn't begin working
16 there until July of 2007? And what's his answer? Yeah, it's
17 possible. So it's possible that all the things you just told
18 us from the witness stand, after being prepared to testify,
19 that you saw and heard between 2004 and 2007, you actually
20 never heard, never saw, because you weren't even there? And
21 what was his answer? Yeah, that's possible.

22 How does something like that even happen? How does a
23 witness like that even get on to the witness stand? Did he not
24 tell the government that? Did nobody realize that he wasn't
25 working there for those three years? Was it OK to put him up

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Summation - Mr. Ginsberg

1 there and lie about all these things he is saying, about the
2 company that was bad, and he wasn't even there to hear it or
3 see it?

4 Those are government witnesses. And if there was no
5 such thing as cross-examination, you would have never known
6 that he wasn't there. If the government just had the right to
7 put up a witness and let him testify, nobody asked him more
8 questions, it would have been out there for you to accept that
9 he saw and did all those things, when we now know he didn't.

10 And, frankly, when he got off the stand, the way he
11 walked out was like he didn't have a care in the world, and so
12 what, I just got up there and made up three years of my life
13 and pieces of evidence, in a trial, in a federal courthouse,
14 where people are being accused of crimes.

15 I didn't call him as a witness. I didn't prepare him
16 as a witness. I didn't go over his background with him. I
17 didn't determine when he started working there. So what is
18 that? It's another witness who is not believable. You can't
19 believe a thing he said. But instead, the government takes
20 witnesses like that and wants to tell you that witnesses that
21 were called by the defense -- Goodman, maybe even Cliff Cohen,
22 Conly Schulte, Chief Lankford -- you shouldn't believe them.
23 Why? Mr. Goodman testified without immunity. Chief Lankford
24 testified without immunity. Conly Schulte testified without
25 immunity. Derek Douglas testified without immunity. Meaning

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Summation - Mr. Ginsberg

1 the government didn't give them protection and say, don't
2 worry, get up there and testify and you won't be charged with
3 any crimes. They testified without any of that protection, and
4 they told you what happened, what they did. And I suggest they
5 told you the truth.

6 Now, if you think that Adrian Rubin is more believable
7 than Leonard Goodman and the County Bank lending process was a
8 sham, I don't know if there is much more I can say to convince
9 you these charges and this case hasn't been proven beyond a
10 reasonable doubt.

11 How do you take two people like that, so different,
12 and be asked to believe an Adrian Rubin and not Leonard
13 Goodman? How do you do that? Because you want it to fit your
14 theory. How do you forget about all the memos that were
15 written by the County Bank saying, this is our criteria, this
16 is what you have to follow. Yes, we are only going to take 5
17 percent and you can have 95 percent. That's a business
18 decision. That's a business deal. It doesn't make it illegal
19 or improper. And you heard even from the government that
20 banks, because of certain regulations, are allowed to charge
21 rates to people in other states, depending on what the rate is
22 in their own state, in Delaware.

23 One final thing about Adrian Rubin. For some reason
24 he wasn't asked to plead guilty to perjury, even though he
25 admitted to us that he committed perjury on two separate

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Summation - Mr. Ginsberg

1 occasions. One was in a deposition, which is bad enough, but
2 the other one was at a trial in front of a judge, where he got
3 on the witness stand, swore to tell the truth, and lied. So
4 why is it any different here? You think because there is a
5 jury he is going to change the way he operates? People like
6 that don't change. If you're going to sit there and lie to a
7 judge's face, you will sit there and lie to a jury's face. And
8 you will do it smugly, with a nice little tan, maybe because he
9 still has his house in Florida.

10 Now, I want to talk briefly about the customers. We
11 are not unsympathetic sitting here and listening to the
12 testimony. We are not unsympathetic to the financial and
13 emotional effect that repayment of the money borrowed had on
14 these people. It wasn't pleasant to hear. It wasn't fun to
15 hear. But you were shown all the documents that they received.
16 You were shown the TILA box. You were shown what it says right
17 under the TILA box. You were shown documents that talked about
18 renewals right under the TILA box. You were shown documents
19 that said they could cancel within one full business day after
20 they received the money. You were shown the "congratulations"
21 e-mail with further explanation of the renewals. But almost to
22 a person, each one of those customers said, Well, I didn't
23 really read the whole thing. I didn't really pay attention to
24 the whole thing. I don't remember if I received that e-mail.

25 And why did they do that? Not because they were being

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Summation - Mr. Ginsberg

1 misled and fooled, but because for their financial needs and
2 reasons, they wanted to borrow the money. And so they went
3 ahead and did it, even though the information was right there
4 for them to see. It wasn't hidden. It wasn't sent to them ten
5 days later. It was right there. And yeah, the top box had the
6 interest rate, when a payment has to be made, and how much it's
7 going to be, if you didn't renew. And right underneath it, it
8 talked about renewals. And then it talked about automatic
9 renewals. And it talked about the right, if you give notice
10 three days before a payment is due, you won't have an automatic
11 renewal.

12 But at the time they wanted the loans, they wanted the
13 loans. And so they didn't pay attention to it. They didn't
14 focus on it. And, therefore, it wasn't material to them. It
15 wasn't essential to them because they didn't even bother to
16 read it, so how would they know what it said? And there were
17 also documents where they had to check boxes off, and then sign
18 at the bottom that they read the material in the boxes, and
19 they are signing because they understand it and they want
20 loans. And they went ahead and they did it.

21 After the fact, when the automatic renewals happened
22 and the payments went up, they were upset and they called and
23 wrote letters, but when they made the application the
24 information was there. It wasn't put there to deceive them.
25 It was put there to have them on notice of how this works, if

HAC8TUC3

Summation - Mr. Ginsberg

1 you pay right away or if you don't pay right away, and if you
2 renew.

3 The slide in front of you talks about the renewal
4 terms, the other disclosures that were made at the time of the
5 application. In the e-mail follow-up letter that I think Mr.
6 Hamner said he didn't remember getting, the same day as he made
7 the application, renewal appears 15 times. How could you not
8 see that? How could you not know it says that? You can't miss
9 the whole thing. You can't miss that word over and over and
10 over again. Therefore, they were not misled or tricked or
11 deceived.

12 And the government makes an issue about all the
13 complaints. They throw out numbers. I think they said 1500,
14 whatever it was. Well, you heard testimony from the
15 government's own witnesses that the customer complaint rate was
16 one percent or less. Now, maybe you would say even one
17 complaint is too many. Well, I suggest to you your common
18 sense tells you one percent or less complaint is probably lower
19 than many businesses operating in this country. Complaints
20 when you have a cell phone service and you have a problem and
21 you call up, how many times do people do that? Cable TV and
22 there is a problem and people call up to complain, I didn't pay
23 for this service, I'm not getting this service, where is this
24 charge coming from? One percent is a very low rate. And they
25 are talking about millions of loans.

HAC8TUC3

Summation - Mr. Ginsberg

1 And the complaints were handled and responded to.

2 Maybe not the way the government would like, but they were
3 responded to. And if they weren't resolved, it went to another
4 level. So that doesn't prove anything.

5 And we are told by Crystal Grote that there was a high
6 rate of repeat customers. So are people who are being deceived
7 and defrauded going to continue to apply for another loan
8 again? Not just a renewal, but a new loan? That doesn't seem
9 likely that they would do that.

10 Crystal Grote also told you that when the County Bank
11 model was in place, customers wanted to have an automatic
12 renewal. They didn't like the idea that they had to actually
13 do something to get a renewal, and they told the business about
14 it. And when the model changed from the County Bank to the
15 tribes, the automatic renewals was put into place, which they
16 had notice of. So it wasn't something that was just created to
17 make people take out more loans. It was something the
18 customers were asking for. It's not coming from me. It's
19 coming from Crystal Grote who is a government witness.

20 I talked already about the County Bank model and
21 Leonard Goodman. An important thing about Leonard Goodman's
22 testimony is the fact that Mr. Tucker asked him for his legal
23 opinion about participating in a program through NMS as a
24 servicer for the bank. And he said, "Yes, that's correct."

25 And he answers the next question: "Well, I went back

HAC8TUC3

Summation - Mr. Ginsberg

1 and looked at the applicable law that I had been referring to
2 all along in designing the program and just wrote him an
3 opinion that said, "you're in compliance with the law."

4 (Continued on next page)

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HacWtuc4

Summation - Mr. Ginsberg

1 MR. GINSBERG: So is that a lie? Did Leonard Goodman
2 lie on the witness stand about being asked the question by
3 Scott Tucker, going back and looking at the law again and then
4 giving him an opinion saying, You're in compliance with the
5 law? That's what the government would have you believe.

6 And if Goodman did it, then the president and all
7 those other people that he was working with at the bank had to
8 know he was doing that too, so they're all part of this, and
9 that's pretty hard to believe. And I think he told us that Mr.
10 Slatcher, and I think the name was pronounced wrong a few time
11 times, but he's still president of the bank. He's still
12 running that bank. So what did he do wrong? Was he removed by
13 some agency or regulatory organization? No, because that model
14 was permissible, and it wasn't as Adrian Rubin would have you
15 believe.

16 And one little last piece about Adrian Rubin, there
17 were those questions about the platinum cards that he did, this
18 other fraud that he got his sons involved in. Every time he
19 was asked about doing that, his answers always began with,
20 Well, this guy Mr. Corby brought it to me; it was Mr. Corby's
21 idea, like shifting it away from himself. And that's what he
22 tries to do. He tries to shift it away from himself until he
23 really gets caught, and then he signs a cooperation agreement,
24 to try to avoid going to jail for however many years he's now
25 facing.

HacWtuc4

Summation - Mr. Ginsberg

1 Again, he's the one the government asks you to
2 believe, and not Leonard Goodman and not the other people at
3 the bank.

4 Crystal Grote, again, had to seek approval from County
5 Bank for the materials that were being prepared, from Scott
6 Walsmith, who was in charge of compliance. You think Scott
7 Walsmith was another coconspirator, along with Leonard Goodman?
8 Do you think he believed that the loans weren't being made by
9 the bank and he just went along with it too? That's what the
10 government would have you believe.

11 And again Crystal Grote:

12 "Q. Is it fair to say that the lending entities that Scott
13 Tucker was involved in were required by the bank to follow the
14 compliance directions from County Bank?

15 "A. Yes."

16 Was she lying about that, a government witness? Was
17 she lying when she says Scott Tucker had to be in compliance
18 with the bank's rules? And if he was in compliance and they
19 had their own rules, then it's not a sham. The government
20 can't have it both ways; it can't have her being a truth teller
21 and a liar. So what do we make of that?

22 We know that the banks were regularly audited from
23 year to year, whether it be the state regulators or the federal
24 regulators. So did somehow they all get fooled? Were the bank
25 regulators not able to tell who was lending the money, that it

HacWtuc4

Summation - Mr. Ginsberg

1 was the bank that was lending the money? Did they all get
2 fooled year after year after year? I suggest that is not the
3 case.

4 Now, let's move on to Lisa Adams, because she was
5 mentioned in closing. She was a lawyer for the Yurok, and the
6 way the government phrases her position is that Scott Tucker
7 somehow didn't want to do business with the Yurok because the
8 Yurok wasn't willing to play ball with the way he wanted to do
9 it. She wasn't on the stand for a really long time, but what
10 we learned from her is that week after week, month after month,
11 maybe up to a year or more, she was told on behalf of her
12 tribe, In order to be involved in this lending program, you
13 need to pass certain regulations and ordinances to make it
14 legal. And for whatever reason, the Yurok wasn't ever able to
15 do it.

16 She said they were spread out all over the place.
17 They didn't have meetings that often. They sort of operated on
18 their own at times. It was hard to control them, and she
19 finally got a letter from Conly Schulte saying: I'm sorry.
20 We've waited all this time. You haven't passed the regulations
21 and ordinances that you have to pass, and we just don't want to
22 do business with you, because we're not going to do business
23 with a tribe that doesn't follow the rules and regulations.
24 And now somehow that's Scott Tucker's fault. Scott Tucker
25 should have written all the regulations and rules?

HacWtuc4

Summation - Mr. Ginsberg

1 If Scott Tucker was writing all the regulations and
2 rules, as the government suggests with other tribes, he could
3 have done it for the Yurok too. He could have said, Here's the
4 20 things you have to do; get some meetings together and pass
5 them. But it never happened, and now it says Scott Tucker
6 wanted to run it in some improper way, and that's why it didn't
7 happen, when that's not the case at all.

8 And by the way, the Yurok was the tribe that because
9 there was a letter of intent to be involved in this business,
10 they were receiving checks for \$12,500 in advance of the
11 business getting started. And they received four checks and
12 they received \$50,000, and they never entered into an
13 agreement, and she told us -- Lisa Adams did -- that they had
14 no ability to be paid that money. They knew they were getting
15 the money. They didn't know if the business was going to get
16 started. She couldn't get the regulations passed, but they
17 kept the money. So they got a free \$50,000 for not doing
18 business with Scott Tucker. And now all of a sudden, it's
19 Scott Tucker's fault, the government says, another example of
20 how he defrauded somebody or cheated somebody.

21 The Kickapoo was in business doing loans for about, I
22 don't know if it was a year, year and a half, and Russell
23 Bradley was called to testify about that. And it appeared that
24 Russell Bradley didn't really like the idea of payday loans,
25 but he wasn't the one making the final decisions for the tribe.

HacWtuc4

Summation - Mr. Ginsberg

1 He told us, however, that Steve Cadue, who was in a position of
2 authority at the tribe, wanted the deal to go through. The
3 tribe wanted the deal to go through. They passed regulations.
4 They passed ordinances. They made an agreement with UMS. They
5 gave Scott Tucker power of attorney. They made money. They
6 had lawyers representing them. Elsa Smith and Conly Schulte
7 were helping the tribe, and Cliff Cohen was helping Scott
8 Tucker. And then they decided not to continue with the
9 business.

10 Where was the crime there? They just didn't want to
11 do it anymore. He didn't like it? OK. A lot of you may be
12 sitting here now thinking, "I don't like payday lending," but
13 that doesn't mean that Scott Tucker is guilty beyond a
14 reasonable doubt. And what the Kickapoo did doesn't speak to
15 that either.

16 The terms that Scott Tucker set out for the tribes
17 were tribal ownership. The letter of intent was the first
18 thing that the tribes got. And in the letter of intent, it
19 spells out what the tribes need to do to make this truly a
20 tribal business, not simply lending its name to some distant
21 commercial enterprise. And I know what the government said,
22 and they're going to probably say it again at the end: it was
23 just paper.

24 Well, it wasn't just paper, and we'll demonstrate that
25 to you. But they started with the letter of intent and were

HacWtuc4

Summation - Mr. Ginsberg

1 told in the letter of intent that that's the way this would
2 operate. There were service agreements and there were other
3 documents that we saw, but I want to for a moment skip to the
4 Miami tribe and the nonprosecution agreement.

5 The nonprosecution agreement tells the tribe, or two
6 of its entities, that if they agree to this nonprosecution
7 agreement, they -- MNES and AMG, MNE -- will not be prosecuted
8 for committing any crimes, and they signed the agreement. When
9 they signed the agreement, they were required to pay \$48
10 million, and when the government was asking about it on
11 cross-examination, the government made it seem like: Well,
12 we're going to be really nice to you. We're going to let you
13 keep \$12 million for education and things that you need on
14 tribal land, but they forgot about the \$119 million or the \$189
15 million that appears in the annual reports that the Miami tribe
16 made from the payday lending business.

17 Now, first of all, that's not 1 percent. Second of
18 all, they made that money, it was their money to make, it was
19 their money to use, and you were told that they bought
20 businesses with that money. So it wasn't Scott Tucker's money.
21 It wasn't Scott Tucker's money the way you heard on these tapes
22 when there's a discussion between Don Brady and Carolyn
23 Williams, where they say, Well, all the money in the accounts
24 is Scott Tucker's.

25 Well, it wasn't. How did the tribe get that money,

HacWtuc4

Summation - Mr. Ginsberg

1 120, 150, \$200 million? Because it was Scott Tucker's money?

2 The tribes got what they had bargained for and more. And more.

3 What's also very interesting and, I think, significant
4 about the nonprosecution agreement is that attached to the
5 nonprosecution agreement was Exhibit A, the statement of facts
6 prepared by the government, to be signed by the representatives
7 of the Miami tribe in entering into this agreement. What it
8 says, and what is admitted by the representatives of the tribe
9 who signed the document, is, "In certain state court
10 litigations, a then representative of the Miami," Don Brady,
11 "who was also then an officer of entities controlled by the
12 Miami that were involved in the loan business submitted factual
13 declarations. These declarations were false, in part, because
14 they overstated the involvement of such former representative
15 and that of the Miami and entities controlled by the Miami in
16 the operations of the loan business."

17 That is the only fact that was admitted to by the
18 Miami that they did wrong that had them sign this
19 nonprosecution agreement. Now, if the government wanted --
20 they prepared this document -- they could have put in Exhibit A
21 paragraph 5: And we, the Miami, state that we were never the
22 lenders. We, the Miami tribe, state we never had anything to
23 do with any part of the operation of the lending business. We,
24 the Miami tribe, entered into a sham. We, the Miami tribe,
25 just created a paper trail.

HacWtuc4

Summation - Mr. Ginsberg

1 The government had every right to put whatever they
2 wanted into that document and ask the Miami to sign it.
3 Instead, what we have here is an overstatement by Don Brady.
4 That doesn't make Scott Tucker guilty. Don Brady made a lot of
5 overstatements.

6 Don Brady was, I think the way it sounds, sort of
7 being paternalistic towards the tribe. He was in his 70s and
8 then he turned 80. We heard they had a party for him. He was
9 in big businesses before, and it appears that he believed that
10 he knew how to run this operation. For the tribe, he didn't
11 give them a lot of information, and he conducted his business.
12 He met with Scott Tucker. He went to Kansas City, people came
13 down to meet with him. He had the choice to be involved as
14 much or as little as he wanted to. That was his choice, and if
15 the tribe wanted to ask him questions at the board meetings --
16 and there were plenty of board meetings. The government says
17 there was only a few. That was AMG. That wasn't the other
18 entities. They were having board meetings all the time and
19 tribal council meetings all the time.

20 So why is this the only thing in Exhibit A? Because
21 the Miami wouldn't say -- didn't say -- that we weren't the
22 lenders, that it wasn't our money, that we didn't make 120 or
23 150 or \$190 million.

24 I didn't write this agreement. This agreement is
25 between the Miami and the government, but there's a lot

HacWtuc4

Summation - Mr. Ginsberg

1 missing.

2 They discussed the payday business on a regular basis,
3 monthly meetings. Did they discuss it as much as they should
4 have or could have? Maybe not. Was anybody prevented from
5 asking questions of Don Brady? Go to his office, call him up?
6 No. And if Don Brady didn't give the information, that's Don
7 Brady's fault. It doesn't make Scott Tucker guilty of a crime.

8 There were tribal representatives that testified,
9 called by the government and called by the defense. Troy
10 Little Axe, of the Modoc, testified. He said he didn't do very
11 much, but he knew and he was aware of the procedures that were
12 in place for the approvals, for the lending operation, how it
13 was being run. He went up to Kansas City, and he decided to do
14 as much or as little as he wanted to do. Nobody prevented him
15 from doing more or asking more. Nobody.

16 Interestingly, with Troy Little Axe, the government
17 asked, if you'll remember, on direct examination, about that
18 Hallinan settlement, where he signed on behalf of five
19 companies, and the government tried to demonstrate on direct
20 examination that he had no authority to sign; he didn't own
21 those companies. So basically what he did was false and
22 fraudulent. And then on cross-examination, when he was shown
23 the stock purchase agreements for those five businesses, that
24 had occurred prior to the Hallinan settlement, he said, Oh,
25 yeah. Either I was mistaken, I was incorrect. He didn't say

HacWtuc4

Summation - Mr. Ginsberg

1 lie. Maybe he didn't mean to lie, but those documents were
2 signed, and the government had him say just the opposite.

3 Did they not have those documents? Did they not
4 review them with him? Did they allow him to say something on
5 direct examination that was not truthful, with all the
6 preparation they had? Why does that happen on direct
7 examination and on cross-examination you get the opposite
8 answer? Because he's not prepared? Because he wants to please
9 the government? Because he has a nonprosecution agreement and
10 he's afraid he might lose it? I don't know what the answer is,
11 but that's what happened. And it wasn't just one. It was five
12 companies.

13 You don't just forget those things. And if they're
14 there and you have the documents, which we had, you show them
15 to him, if you're the government, and ask him for an
16 explanation. You don't just forget about it.

17 There was Chief Gamble, who testified. He's a very
18 nice man who didn't seem to remember a whole lot, but he
19 remembered that he was updated monthly by Don Brady. He
20 remembered all the resolutions that were passed, all the board
21 meetings that he attended and council meetings, all the things
22 he was told were required to be done in order to have this
23 business operate. And he testified about that.

24 Chief Lankford also testified about that, and Chief
25 Lankford's the one who testified about the nonprosecution

HacWtuc4

Summation - Mr. Ginsberg

1 agreement and paragraph 4 that we just talked about. He knew
2 that the Miami were making money. He was there towards the end
3 when those annual reports were shown, when the businesses were
4 being purchased with the 120, 130, \$140 million.

5 I'm being told periodically how much time I have left.
6 That's what that is.

7 THE COURT: Ladies and gentlemen, why don't you stand
8 up and stretch for a moment, please.

9 MR. GINSBERG: Can I keep that extra moment?

10 THE COURT: I'm watching it. I didn't say you
11 couldn't talk while the jurors were stretching.

12 MR. GINSBERG: I'm being respectful.

13 THE COURT: I have it.

14 And the deep breath, please.

15 All right.

16 MR. GINSBERG: Evidence of tribal ownership.

17 The lending businesses were registered under tribal
18 charter. They passed the regulations that needed to be passed
19 in order to do that. They had service agreements, signed
20 between the servicer and the tribe, which spelled out what the
21 tribe was going to do and what the servicer was going to do.

22 This one's signed by Don Brady.

23 They passed resolutions, which were required to be
24 done, unlike the Yurok that couldn't get it together to do all
25 these things. They amended their lending codes so that under

HacWtuc4

Summation - Mr. Ginsberg

1 tribal law they were allowed to be lenders and could
2 participate in this business.

3 There was testimony about how each tribe, through the
4 representative of the tribe, knew and approved of the loan
5 criteria. Now, the government tried to make a big deal about
6 it during the course of the trial, that the tribes didn't know
7 the criteria. Remember all the testimony about Selling Source
8 and DataX, which was something that was created to do sort of
9 an automatic electronic processing of applications? There was
10 green light, red light, yellow light? Every tribe, each person
11 who was a representative for the tribe, knew about that, either
12 discussed it on tribal land, discussed it when they went to
13 Kansas City, were told what the criteria was, and they agreed
14 with it. They knew what it was. If they didn't want to
15 participate further once they agreed with the approval method
16 being used by the servicer, that was OK. And that's what they
17 chose to do.

18 There were powers of attorney that were granted to
19 Scott Tucker, which allowed him to do certain things with the
20 accounts, the checking accounts. And again, we hear about that
21 from the government, as if Scott Tucker could go in, take all
22 the money and walk away. Well, guess what? If he could have
23 and wanted to, he certainly didn't do it. He got money. He
24 got paid, because there was an agreement that the servicer
25 would get 99 percent, which, it turns out, they got less than

HacWtuc4

Summation - Mr. Ginsberg

1 that, and the tribes made more than that. He didn't just go in
2 and raid all those accounts and take all the money, because at
3 the end of the day, the power of attorney could be revoked at
4 any time.

5 The tribes could go in and take all the money that was
6 in those accounts, and Scott Tucker had no way to stop them,
7 because they were their accounts, not his. He only had the
8 power of attorney. He didn't have the control over those
9 accounts. And that's why, in 2013, when you see the financials
10 for Miami Nation Enterprises, it had total gross revenues of
11 \$233 million, total assets of \$189 million. That's way more
12 than 1 percent. So if the government's trying to make you feel
13 sorry for the tribes, that they're being taken advantage of,
14 that's not what happened.

15 The Modoc, I think Troy Little Axe said they had 9 or
16 \$10 million when they stopped the servicing with Scott Tucker,
17 and then they went on their own to do their own lending,
18 because they had learned how to do the servicing from AMG,
19 which was being run by the Miami tribe. So they weren't being
20 taken advantage of. In fact, they made a lot of money,
21 probably more money than tribes could make from any operation
22 except for the ones who are fortunate enough to have casinos
23 near big cities. So that wasn't being taken advantage of. And
24 they took the money and they used the money as they saw fit.

25 There was a chart that the government used, Government

HacWtuc4

Summation - Mr. Ginsberg

1 Exhibit 3551, which was the comparison of the management fees
2 compared to Scott Tucker's receipts, and I'm sure you can't
3 forget that testimony, because an accountant came in here, a
4 forensic accountant, a CPA, to use these charts to show you
5 that the tribes only got 1 percent. And how did she do that
6 magic when she was asked to add the numbers on the chart? The
7 numbers for Scott Tucker's receipts and the management fees?

8 She told us that \$41 million is 1 percent of about 400
9 and something million dollars. Well, of course it isn't. It's
10 about 10 percent. How did she come up with 1 percent? You
11 think it was just a math mistake? By a CPA, who ended up
12 needing a calculator? Or do you think that the 1 percent was
13 in her head because all the information she had been provided
14 to prepare these charts was given to her by the government, and
15 that 1 percent fits their theory? Because it was wrong, and it
16 was wrong by a lot. And there's no explanation for how you can
17 do that. A third grader can do that, let alone a CPA. How
18 does something like that happen? And even when she had the
19 calculator, she got the percentages wrong.

20 But it also shows Scott Tucker didn't take all the
21 money, didn't have control of all the money. In this instance,
22 the Miami had plenty of money, more than they probably ever
23 dreamed they could make from this, whether or not they decided
24 to participate a lot or a little.

25 We talked a little bit about the loan criteria and

HacWtuc4

Summation - Mr. Ginsberg

1 Selling Source and DataX, and there was testimony about the
2 purchase of Selling Source and then DataX and how that was used
3 for credit-reporting purposes and criteria purposes. That
4 wasn't something that was made up. That was information given
5 to the tribes and given to whoever was in charge from the
6 tribes of knowing how the business operated. And in fact,
7 there were payments made to Selling Source by MNE, TFS, Red
8 Cedar, all the tribal companies, for the use of DataX, the
9 criteria. Did they just pay the money fictitiously to DataX?
10 Did they believe there was no such thing as DataX? Did they
11 not understand that DataX was the one that created the process
12 by which loans should be approved or not approved? This
13 demonstrates that that's not the case.

14 There's plenty of evidence of tribal ownership. Every
15 one of those tribal charters, the lending codes, the bank
16 accounts, the loan criteria, the power of attorney, and
17 finally -- there's more power of attorney documents I have
18 here, but I'm going to move through it quickly; the Modoc gave
19 power of attorney; Don Brady, for Miami, gave power of
20 attorney -- what really demonstrates the control, the
21 ownership, that the tribes had is you heard they were able to
22 terminate Scott Tucker's services and their relationship with
23 his businesses.

24 Now, only somebody who is in the position in a
25 relationship where their owner can turn around and say, You're

HacWtuc4

Summation - Mr. Ginsberg

1 fired, we don't want to work with you anymore -- Scott Tucker
2 didn't do that with the tribes -- the tribes did that with
3 Scott Tucker, because they had the ability and control to do
4 that. And they did it. And then the Modoc and Santee went on
5 to have their own businesses, and the Miami terminated its
6 business.

7 We heard testimony even from Crystal Grote that she
8 believed the tribes owned the business.

9 There were lots of witnesses. I don't have the time
10 to mention each one of them. Allison Harris wanted all the
11 financial documents, didn't get them, but 12 boxes arrived.
12 She's been complaining she never saw the financial documents,
13 the boxes arrived, and she never looked at the financial
14 documents.

15 Crystal Grote we've talked about already. Crystal
16 Grote took her plea, made her deal, told us not that the tribes
17 didn't have involvement, but didn't have much involvement.

18 We talked about Lee Ickes, Troy Little Axe and Don
19 Brady. But there was no requirement for the amount of
20 involvement that they needed to have. You heard the testimony
21 from the lawyers. All the lawyers were doing the research.
22 There was no set regulations about tribal lending and what the
23 specific rules were as to how that should take place, how much
24 the tribe needed to do, how much they didn't need to do.

25 That started out with Ellen Bachman, Cliff Cohen,

HacWtuc4

Summation - Mr. Ginsberg

1 Conly Schulte, Tim Muir. They researched cases, Supreme Court
2 cases, appellate court cases, state court cases. There was no
3 rule. There was no regulation that was made that said, If you
4 want to be a tribal lender, you need to do 1 through 10,
5 otherwise you can't do it. So they looked at it, and each one
6 had a different view about how much needed to be done or didn't
7 need to be done, and they gave their opinion to Scott Tucker.
8 And he relied on it in good faith.

9 Quickly, the Nevada companies. You heard the two
10 witnesses say they were legal, legitimate. They did it all the
11 time; it was for privacy. And there was testimony from one of
12 the lawyer witnesses that it was permissible to make the loans
13 the way they were made out of Nevada because of Nevada state
14 laws. So again, it fails.

15 Carolyn Williams. Carolyn Williams decided, near the
16 end of her second term working for Scott Tucker, that she
17 didn't like what was going on. She has those recordings with
18 Don Brady and some recordings with the board. She doesn't
19 start making those recordings of the board or Don Brady until
20 she gets into her head the idea that she wants to become a
21 whistleblower --

22 THE COURT: All right. Start bringing it to a close,
23 Mr. Ginsberg.

24 MR. GINSBERG: -- where she could make a lot of money.
25 She had opportunity after opportunity after opportunity to

HacWtuc4

Summation - Mr. Ginsberg

1 record the earlier meetings, and she never did. And she didn't
2 tell people that she was recording them. And then she didn't
3 even tell us that she had two recorders until the middle of
4 Mr. Bath's cross-examination. So she had a motive. It didn't
5 work out for her, but she had a motive. And then she also took
6 documents and other material in the eight months that she
7 worked there, after she went to the whistleblower, to try to
8 make her case as good as it could be.

9 Now, the government went through the chart of all the
10 charges, and I'll very quickly do it and then I will end.

11 THE COURT: All right. You're at your time limit even
12 as extended.

13 MR. GINSBERG: Could I have two minutes? Thank you.

14 To convict Scott Tucker, you have to find that he was
15 aware of the generally unlawful nature of his acts as to
16 certain of the counts.

17 As to other counts, he had advice of counsel that he
18 relied upon.

19 As to other counts, he acted in good faith, without
20 ever having the intent, the specific intent, to defraud. And
21 that goes to the wire fraud, which underlies all of the counts
22 that follow it, the promotion of money laundering, concealment
23 of money laundering.

24 So it's not so simple. It could be made to appear
25 simple so the jury doesn't look at all of these witnesses, all

HacWtuc4

1 of the testimony, all of the things that were said that support
2 the concept that this was a business deal that didn't have
3 specific regulations to it, that Scott Tucker took advantage of
4 a business deal that was out there to be taken advantage of,
5 but it doesn't make him guilty of the crimes that are charged.
6 If he was aggressive, if he was pushy, that's not guilt beyond
7 a reasonable doubt.

8 Ladies and gentlemen, I thank you again for your
9 patience, and ask you to think of all of those concepts and
10 ideas. I don't get a chance to speak again. Mr. Bath will
11 speak with you, and then the government gets a rebuttal. It's
12 the hardest thing for a lawyer to do, shut up. I have to sit
13 down now. I can't talk to you again. But I trust that if
14 things are raised by the government later on, you'll remember
15 what was said just now in thinking about responses to what they
16 may raise.

17 Thank you very much.

18 THE COURT: All right. Thank you, Mr. Ginsberg.

19 Ladies and gentlemen, why don't we take a half an hour
20 for lunch, and then we'll come in and get you and pick up with
21 the remaining closing arguments.

22 If it is not inconvenient for you, and you'll let me
23 know, I would like us to finish the jury instructions today,
24 and that way you can start deliberating tomorrow morning. This
25 may mean that we may spill over a bit this afternoon. If

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1 that's a severe hardship for anyone, please send a note through
2 my deputy, and I'll reconsider on that, but I would like to get
3 this case to you for your deliberations as quickly as possible.
4 All right?

5 Enjoy lunch.

6 (Jury not present)

7 THE COURT: All right. I've read and reread the
8 proposed redactions to the superseding indictment, which is
9 Court's Exhibit 17, and with that review, the redacted
10 indictment, as tendered to me, is approved, with the deletions
11 that I directed in paragraphs 4 and 5. So you should prepare
12 that for the jury.

13 MR. SCOTTEN: Will do, your Honor.

14 THE COURT: Enjoy lunch. See you in half an hour.

15 (Luncheon recess)

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HAC8TUC5

Summation - Mr. Bath

1 AFTERNOON SESSION

2 2:20 p.m.

3 (Jury not present)

4 THE COURT: Check on our jurors, please.

5 MR. SCOTTEN: Your Honor, would you like us to hand up
6 a copy of the fully redacted indictment?

7 THE COURT: How many copies do you have?

8 MR. SCOTTEN: We have a bunch of copies being made.

9 THE COURT: One will be marked as the next court
10 exhibit.11 MR. SCOTTEN: Do you want us to go ahead and make
12 enough copies for the jury or is the court going to do that?13 THE COURT: No. You should make two copies for the
14 jury.

15 MR. SCOTTEN: Will do, your Honor.

16 (Continued on next page)

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Summation - Mr. Bath

1 (Jury present)

2 THE COURT: Please be seated. I hope no one has
3 indigestion.

4 In any event, Mr. Bath, whenever you are ready.

5 MR. BATH: May it please the court, counsel, ladies
6 and gentlemen.

7 I want to go back with you and review what has the
8 government proven against Tim Muir in this case.

9 Let's first start with 1997 and move forward.

10 This timeline gives a snapshot of what was going on
11 from 1998 through 2006.

12 As you recall from Mr. Muir's testimony, about this
13 time, '98, '99, 2000, he was in the pizza business, managing a
14 pizza restaurant. He was in law school and graduated in 2004.

15 What we know this trial has proven is that he wasn't
16 involved in this: County Bank. He wasn't involved with Rubin.
17 He wasn't involved in the nominee companies. He wasn't
18 involved with Shoaf. He wasn't involved with Fontano. He
19 wasn't involved with Yurok. He wasn't involved with Lisa
20 Adams. He wasn't involved with Bradley Russell or the
21 Kickapoos. He wasn't involved in the agreements that got
22 drafted in 2003 or '04 with the Miami or the Santee or the
23 Modoc. He wasn't involved with the tribal corporation
24 formation or the resolutions, tribal boards, for any of the
25 three that took place. He wasn't involved at the start of the

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Summation - Mr. Bath

1 lending. He wasn't involved in any of the lending that took
2 place at any time along 2006. He begins about June of 2006.

3 What else has it shown he wasn't involved in? He
4 wasn't an owner. He wasn't an operator. He didn't get any of
5 the profits. He didn't control the entities. He didn't do any
6 advertising. He didn't do hiring for his personal law firm.
7 He didn't do firing. He didn't write any checks. Except I
8 guess the checks he wrote for his own law firm. The government
9 is suggesting in their closing today because he sent that one
10 check for the \$2300, that was money laundering. Really, it's
11 money laundering? The \$2300 check he sent to Pete Smith for
12 the legal services. Those are the checks he was involved in.
13 He wasn't involved in preparing the financials. He wasn't
14 involved in discussing the financials in terms of profit and
15 loss. You had no testimony about that whatsoever. No
16 day-to-day management by Tim Muir.

17 We heard about the Selling Source sale to London Bay,
18 which was 2007. He wasn't involved in that.

19 The AMG/CLK merger. That was in 2008. In 2008, that
20 merger, he said he wasn't involved. He became aware of it, but
21 that deal was done by Conly Schulte.

22 He wasn't involved with drafting the affidavits or
23 declarations. The government suggested, well, he saw some of
24 them, some of them may have come across his desk. He admitted
25 to that. But he didn't draft any of those affidavits or

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Summation - Mr. Bath

1 declarations.

2 He wasn't involved in the weather reports. The
3 government suggested in its closing argument, well, everybody
4 knew about the weather reports and that Crystal did that
5 because she was lying on behalf of the company. But you
6 remember Crystal's testimony, and I know you have notes.

7 The great thing about there being 12 of you is that
8 four of you may remember something and two others may add to
9 that when you get to deliberations and you will say, let's look
10 at our notes and look at what we remember. The testimony was
11 clear that Crystal said her group, and her group only, created
12 the weather reports. Neither Tucker nor Mr. Muir knew anything
13 about these weather reports.

14 I will loop back to yesterday to an exhibit that was
15 shown to you. Remember there was an exhibit shown on
16 cross-examination where after the depos in the FTC case, Conly
17 Schulte sent an e-mail to Tim and said: Depos just ended and
18 Crystal deserves a medal.

19 It was suggested in cross-examination that what that
20 was about was she was to be congratulated somehow about the
21 weather, about the fact she lied about the weather in that FTC
22 depo.

23 Crystal Grote lying about the weather in the FTC depo
24 had nothing to do with anybody but Crystal. There is no
25 information whatsoever that Mr. Tucker or Mr. Muir knew

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Summation - Mr. Bath

1 anything about that weather. And that e-mail doesn't even say
2 anything about the weather.

3 It's an attempt, as we have seen, at least my argument
4 is, throughout this entire trial to try to connect Tim Muir
5 when he is not connected. It's a disjointed, cobbled-together
6 argument trying to post together things -- even some things go
7 back to 2005 and 2006 -- and say, well, Tim must have been
8 aware of that because Tim gave legal advice, then he should be
9 convicted. That's the government's theory.

10 I will get into the more specifics.

11 They have one e-mail, I think, maybe two that they
12 have shown about scripts, but they don't show Tim Muir was in
13 charge of scripts. Could scripts have come across his desk or
14 e-mail. Perhaps. I think the one they showed you earlier in
15 summation was from Jared Marsh, who under the government's
16 theory must also be a co-conspirator along with everybody else
17 who was involved in this business.

18 There was nothing about Tim being involved in
19 representations regarding the location. We haven't heard any
20 evidence about that for a long time. But the trial has shown
21 there is no evidence he was involved in that kind of e-mail
22 chain between the management people, because he wasn't
23 management.

24 Tim was never the only lawyer involved in any of these
25 transactions. That doesn't mean he doesn't have responsibility

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Summation - Mr. Bath

1 for whatever he was involved in. My point is, is that the acts
2 of a criminal, where he goes out and gets people like Chris
3 Rose from Vegas or Richard Fontg, Columbo, all these lawyers
4 were involved in all of this? This is all hidden? There are
5 lawyers from all over the country working on different
6 transactions. Is that hiding? Is that the activities of a
7 criminal? No. It's somebody who is giving legal advice and
8 giving the best legal advice to his client.

9 Even before Tim was involved, you had lawyers on both
10 sides of the transaction. Remember Ken Bellmard represented
11 Miami. He was on the board for the Miami. Troy Little Axe is
12 a lawyer, and he of course represented the Modoc. He was the
13 general counsel. I can't remember the exact term he used.

14 I asked you in the opening, why is Tim Muir charged?
15 Why did he get charged? What evidence have they proven he was
16 involved in some kind of criminal conspiracy? I want you to
17 keep that thought in your mind when the government gets up and
18 talks to you on their second rebuttal or on their rebuttal.

19 I want to transition now and talk about what the trial
20 did show Tim was involved in.

21 It showed he was involved in lots of research when he
22 started there. It's been belittled as Internet research, but
23 the fact of the matter is if you use a book nowadays, it's very
24 rare. I like to use paper. I like to use books. He is on the
25 Internet. He is on Westlaw. He is researching statutes, the

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Summation - Mr. Bath

1 United States Constitution, U.S. Supreme Court cases. He is
2 looking at legislation. He is reviewing active cases. That
3 sort of proved Tim was involved.

4 He consulted with other lawyers. He asked other
5 lawyers about their opinion about this tribal model. He went
6 to CLEs. Particularly, he went to CLE in 2013 where 200
7 lawyers are in a room in Washington, D.C., sponsored by the
8 American Bar Association, talking about tribal model.

9 Is that the conduct of somebody who has got a guilty
10 mind, somebody who thinks he is committing a crime? I submit
11 it is not.

12 We heard about his involvement in the Modoc, that he
13 interacted with Troy Little Axe, that he talked to him
14 frequently, that he visited four or five times a year -- the
15 trial has proven that -- that he kept Troy up-to-date, and Troy
16 felt like he was fully informed, that Tim answered all his
17 questions.

18 We heard from Lankford and Gamble, and they said the
19 same thing about Tim. He went down and visited them or talked
20 to them on the phone or would send them e-mails. He went to
21 board meetings. He kept them fully informed as well.

22 We didn't hear from any witnesses involved in Santee.
23 Think about that when you're deliberating in this case. It's
24 the government's burden to prove this case and they don't call
25 one person from the Santee. Did they prove their case?

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Summation - Mr. Bath

1 Tim testified he did talk with Lee Davis. He kept in
2 contact with him, and he kept up with the tribal council and
3 the chief and also informed them on what was going on.

4 We know he was involved in the Hallinan paperwork. He
5 wasn't involved in the settlement discussions so much because
6 that was Pete Smith and I think it was Chris Rose and Conly on
7 behalf of the tribal entities. But he was involved in the end
8 in getting the paperwork signed. The case has proved that he
9 is involved in *Tucker v. AMG*, and we will get into more detail
10 about that.

11 We have heard a little bit in the government's first
12 portion about what their argument is of how this furthered the
13 alleged criminal enterprise.

14 Essentially the government is arguing, well, because
15 this protected Mr. Tucker from liabilities, then this must have
16 furthered the criminal enterprise. It's undisputed that AMG
17 was formed in 2008, that AMG purchased CLK. It's undisputed
18 that AMG, when they got CLK, took over the liabilities.

19 Put up the next slide. Thank you.

20 You recall Pete Smith testified. He testified
21 essentially that this lawsuit would have been Mr. Muir carrying
22 out his duties to his client.

23 Mr. Smith told you -- second to last, the last
24 question -- "According to Mr. Muir, as a result of the failure
25 to file the certificate of merger, Mr. Tucker faced additional

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Summation - Mr. Bath

1 liabilities?"

2 "A. He could, potential future liabilities."

3 Mr. Muir testified to you it would be a default
4 judgment because Mr. Tucker had no way, because CLK no longer
5 existed, to come into court and defend themselves in a class
6 action.

7 We know that Tim was involved in the ITG audits. That
8 was the fall of 2011. We heard that the IRS through ITG was
9 asking for financial documents of all three tribes. We know
10 Tim was involved in that -- the trial's proved that -- in
11 getting 12 boxes of financial documents down to the Miami tribe
12 so that the Miami tribe would have all those financial
13 documents. We know Tim was involved in that.

14 He monitored the California and Colorado litigations.
15 He did that. Only was the lead on that, and Tim monitored
16 that.

17 We know Selling Source v. Red River, Tim had
18 involvement in that. You recall Tim was put on notice that
19 someone was stealing, Red River was stealing data, leads from
20 Selling Source. He then passed that information on to Alton
21 Irby. Alton Irby, on behalf of Selling Source, sues Red River,
22 and that's when that Alton Irby declaration was filed. The
23 declaration where he first said, I think Scott Tucker was the
24 owner of AMG. Muir read it. Muir got ahold of Irby's lawyers
25 and said that's not accurate. That declaration was asked to be

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Summation - Mr. Bath

1 removed or altered in a federal court. It was redacted, is a
2 better word.

3 We know from this trial that Tim was involved in the
4 2011 Tucker eCash transaction. He contacted Sam Humphreys, who
5 contacted his lawyer in San Francisco, and there was a deal
6 struck between Mr. Tucker, and I think he was represented by
7 Colombo at that time, and Selling Source for the Tucker version
8 of eCash.

9 We know that in 2012 there was some kind of licensing
10 agreement between the Miami tribe and Mr. Tucker regarding the
11 eCash. There was an e-mail that was introduced. Mr. Muir
12 testified about that. He said, I couldn't represent either
13 side on the financial side of it, but I forwarded the agreement
14 to Mr. Gamble, Mr. Brady and Mr. Tucker and then later
15 forwarded the agreement to Conly Schulte. So we know he was
16 involved in that.

17 We know ultimately in '13 there was a brand-new
18 agreement between Mr. Tucker and the Miami tribe. The
19 settlement agreement is what it was called. We introduced that
20 document for you.

21 There were a number of attorneys involved. The Miami
22 represented by Kirkland & Ellis, Dorsey & Whitney, and Mike
23 Tulley. Mr. Tucker was represented by Ricardo Fontg and I
24 think Chad Hansen. Tim had some involvement in that. But
25 again, he wasn't on point on that transaction.

HAC8TUC5

Summation - Mr. Bath

1 That transaction is something to keep in mind. That
2 was 2013. I think it's August of 2013. Maybe July 31st. You
3 remember we had testimony that, and we heard the tapes today,
4 where Brady is saying certain things to at least the one board,
5 and that's the NMES board, not the AMG board. We never heard
6 tapes about AMG. That Brady is saying things, and the
7 government is arguing that Brady is saying things it shows and
8 that Brady thinks things are illegal.

9 Mr. Ginsberg argued to you that perhaps Mr. Brady was
10 being paternalistic and was trying to look out for the tribe
11 and not being very cooperative. I suggest to you Mr. Brady was
12 hired by the tribe well before Scott Tucker came along. The
13 tribe had him in place and he was running their businesses.

14 As Mr. Ginsberg said, I guess he turned 80 sometime in
15 that period and perhaps he wasn't very easy to get along with.
16 In any event, he wasn't Mr. Tucker's employee; he was the
17 tribe's employee. And we know in the fall he gets fired.
18 Remember Joe Frazier replaces him.

19 So Joe Frazier, brand-new person, is replacing Brady.
20 So by January 1st of '13, you have Frazier in place and you
21 have Kirkland & Ellis in place. You have brand-new legal
22 representation and a new person at the head of the tribe.

23 What do they do? They enter into an agreement with
24 Mr. Tucker, the settlement agreement. There were three
25 agreements. We introduced the one to you.

HAC8TUC5

Summation - Mr. Bath

1 My point is Brady is no longer there. You can't blame
2 Brady. The government tells you, well, Kirkland & Ellis came
3 in and saw all these bank accounts and discovered new bank
4 accounts. There was no testimony about that. But there is
5 testimony that Kirkland & Ellis came in.

6 Why would they cut a brand-new deal with Mr. Tucker?
7 If this was a big sham, wouldn't Kirkland & Ellis or Dorsey &
8 Whitney have said something like, hey, tribe, you can't be in
9 this business anymore, you can't cut a new deal with Mr.
10 Tucker. That's not what happened. A brand-new slate of
11 people, attorneys, brand-new CEO, Joe Frazier, and cut a
12 brand-new deal. That's because no one believed they were
13 committing a crime, and that's going to be important when you
14 get the judge's instructions and you deliberate.

15 I agree with Mr. Ginsberg that the testimony from some
16 of the people you heard from, the customers here, was difficult
17 to hear. This isn't a referendum on payday lending, and you
18 can certainly find payday lending to reprehensible, repugnant,
19 something no one should be involved in. All we ask is that you
20 try to set that aside, and you do set that aside, and you look
21 at this case based on the facts, not based on this industry and
22 what you think of the people involved in this industry.

23 The government has the burden. And what must they
24 prove? As I said, you will get the instructions from the
25 judge. They have to prove Tim was involved in a criminal

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Summation - Mr. Bath

1 enterprise, and there will be some definitions about what that
2 means. But it's more than mere association. It's not just
3 giving legal advice to a company. You don't get indicted for
4 giving legal advice to a company. He has to have more than
5 mere association.

6 Second, they have to prove beyond a reasonable doubt
7 that a citizen, citizen has the willfulness to commit a crime.
8 They have the mens rea. They have the criminal intent. They
9 have to prove that for both of these individuals. That Tim
10 Muir intended to commit a crime, that he believed he was
11 committing a crime. It's called willfulness.

12 It's important here, and you will get this instruction
13 from the judge. When you weigh this evidence -- that's why I
14 started out with '96 to '06. You weigh the evidence as to each
15 defendant.

16 I believe the government here has tried to essentially
17 combine all of the evidence against both of these individuals
18 and say, well, Mr. Muir must have known everything that was
19 going on even if it happened before he got there. But the law
20 is you're supposed to weigh the evidence against each
21 individual.

22 The verdict is for each individual, Mr. Tucker and
23 Mr. Muir, has to be separate.

24 They must prove that Tim acted willfully, and
25 willfully in the law has a powerful meaning. It has a special

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Summation - Mr. Bath

1 meaning. It means to act deliberately and with a purpose to do
2 something the law forbids. To do something the law forbids.
3 That means you have to find beyond a reasonable doubt that Tim
4 Muir was intentionally committing an act because he believed it
5 to be unlawful.

6 It's up to you, the jury, to determine as a finding of
7 fact whether or not the government has proven that beyond a
8 reasonable doubt.

9 There is also the wire fraud counts. Those have a
10 little different element. You still have to find willfulness,
11 but you also have to find that Tim acted with the intent to
12 defraud. That means he intended to defraud somebody. He knew
13 he was breaking the law and wanted to defraud the customers.

14 You will get an instruction called good faith. And
15 good faith says if someone has an honest belief in the truth of
16 the representations, then you are to take that into
17 consideration as to whether Tim had a guilty mind.

18 You have heard a little bit from both sides so far
19 about our constitutional protections, and I know you all know
20 them. We talked about them a little bit in the opening
21 statement. And that is, in this country the government has the
22 burden, has the burden to prove someone who is presumed
23 innocent -- so we first start with Mr. Muir and Mr. Tucker are
24 both presumed innocent. The government has the burden to prove
25 what they say is true beyond a reasonable doubt. The defense

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Summation - Mr. Bath

1 has no burden at all. We wouldn't have to put on any evidence.
2 We don't have to cross-examine anybody. We don't have to ask
3 any questions. We wouldn't have to given a closing statement
4 or opening statement if we didn't want to.

5 But when we do, you are to evaluate that evidence.
6 And if we do cross-examination or if the evidence we put on the
7 witness stand creates reasonable doubt, then you take that into
8 consideration. But we have no burden. We have no duty to call
9 any witnesses.

10 You will get an instruction also from the judge called
11 aiding and abetting, and that's really what I propose to you
12 the government is counting on for you to try to find Mr. Muir
13 guilty. Aiding and abetting is that you have to willfully
14 associate and willfully participate. There's that willful word
15 again. It's not mere association, it's not that he was there,
16 it's not that things went on. He has to willfully with
17 criminal intent do something which the law forbids, be involved
18 as an aider and abettor.

19 When you get the verdict form, you are going to be
20 asked on each of those counts for each defendant and you are
21 going to be given the choice guilty or not guilty. I know that
22 seems sort of very basic. My point is this. It's not guilty
23 or innocent. Those aren't going to be your choices. Because
24 if the verdict form read guilty or innocent, then you would
25 say, well, I can't find him innocent so I must find him guilty.

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Summation - Mr. Bath

1 That's not what the framers of the Constitution established.
2 Instead it's guilty or not guilty. Not guilty is just not
3 proven.

4 If you find the government hasn't met their burden,
5 then that's not guilty. And their burden isn't he is probably
6 guilty, he may be guilty, he could be guilty. Beyond a
7 reasonable doubt. Anything short of beyond a reasonable doubt
8 is not guilty.

9 Regarding Tim, what are the government's allegations?
10 When you go back and start deliberating, what exactly are they
11 saying that he did?

12 I would like to direct you to Government's Exhibit
13 4024.

14 I submit to you, ladies and gentlemen, this is why Tim
15 Muir got indicted. But this is also why he should be found not
16 guilty.

17 This exhibit was introduced when Troy Little Axe was
18 on the stand, which was September 27, 2011. This is a December
19 -- I'm sorry. 2017. When Troy Little Axe was on the stand,
20 they introduced this document. It's a letter from Tim Muir to
21 Sharon Vandenberg with the IRS.

22 You will be able to take these documents back there
23 and look at them for yourself.

24 Can we go to that second page, Eli.

25 It's a two-page document. It shows Mr. Muir's

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Summation - Mr. Bath

1 signature.

2 Can we go back pack to the first page, please. Thank
3 you.

4 This document -- is this just a two-page document,
5 Eli?

6 Can you go to the third page, please. Let's walk
7 through that document.

8 There are representations made in this document by
9 Mr. Muir and they ask about certain companies. The first one
10 here on this third page is CB Services Corp. And in this
11 document, this page 3, it talks about the fact that Mr. Tucker
12 previously owned -- go to the top third of that page, Eli, and
13 pull that up.

14 It says Mr. Tucker previously owned 100 percent of
15 this business.

16 So in December of '11 Mr. Muir is submitting this to
17 the IRS saying that Mr. Tucker no longer owns CB Services Corp.

18 The government introduces this when Troy Little Axe is
19 on the stand because this is really sort of the government's
20 kill shot, at least that's what they thought, and I am going to
21 explain what that means.

22 So they introduce this document, even though Troy
23 wasn't involved, which is fine, and they show, look, Mr. Muir
24 is representing that CB Services is no longer owned by Mr.
25 Tucker.

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Summation - Mr. Bath

1 Go to the next page.

2 Blow up that top third.

3 Then we have Consumer Services Corp. You remember
4 these are the nominee corporations.

5 This document, this exhibit 4024, submitted by Tim,
6 that says Tucker doesn't own any of these businesses anymore.
7 They name the nominee companies. I am not going to go through
8 all of them with you, but I am explaining exactly why this was
9 introduced by the government.

10 We can take that back down.

11 They then get Troy Little Axe on the stand and ask
12 Troy about the Hallinan settlement.

13 Can we go to Exhibit 811, please.

14 Can we go to page 15.

15 This is the Hallinan settlement agreement.

16 Can you blow up the bottom half of that page.

17 If you recall, Troy Little Axe on direct testimony
18 said, yeah, that's my signature for these companies. There's
19 two of them we talked about. CB Services Corp. and Consumer
20 Service Corp. And Troy Little Axe on direct said, I don't know
21 why I signed this. I don't know anything about this at all.

22 So what the government was setting up, and this is why
23 I submit to you why Tim got indicted, is because he had
24 submitted this document to the IRS and said that Scott didn't
25 own these companies, when in fact the government was going to

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Summation - Mr. Bath

1 argue he did, because they had Troy Little Axe saying, well, I
2 don't know why I signed this, and then they were going to tie
3 this to the Hallinan settlement and say, see, this is just a
4 big fraud because the Modocs weren't involved in this at all
5 and Troy Little Axe either didn't sign this or didn't know when
6 he was signing it. That's why they are trying to include Tim
7 Muir in on the fraud here. That's the connection between those
8 two documents.

9 Remember on cross-examination Mr. Ginsberg got up and
10 he had Defense Exhibits 2215, 2216, 2217, 2218 and 2219. You
11 know what each of those agreements was? Those were agreements
12 for Troy Little Axe, stock purchase agreements for all five of
13 those companies.

14 Troy testified on direct, I don't know what this is
15 about and I don't know why I wouldn't sign this agreement.

16 On cross-examination by Mr. Ginsberg he said, Oh,
17 you're right. That was a little uncomfortable because Troy had
18 been given immunity and now it's like if Troy didn't tell the
19 truth on direct, is that a problem for Troy? Mr. Ginsberg
20 said, well, maybe you just didn't remember, maybe somehow you
21 forgot. Troy is like, Yes, I guess I must have forgotten.

22 Mr. Ginsberg suggested to you in his closing how could
23 that be forgotten? The bottom line is this. When the
24 documents are shown to the witness, all that unravels and the
25 government's kill shot, 4024, falls apart. And we never heard

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Summation - Mr. Bath

1 from it again. You never saw 4024 again. Because they ran
2 from it like a scolded dog, because it completely fell apart.

3 Because Tim gave legal advice -- I will complete the
4 circle. And I showed on cross of Troy the Modoc financial
5 documents. 1085 and 1086.

6 1085, Troy signed the audit. 1086 -- I know it's a
7 lot of documents. It's a lot of information to give to you.
8 1086 showed the Hallinan settlement in the Modoc financial
9 documents. There wasn't any fraud going on there. Either Troy
10 forgot -- although he is a lawyer, you would think he would
11 remember some of that stuff -- or because of the pressure of
12 the moment, pressure of the situation, he was under a grant of
13 immunity, maybe he felt like he had to give the narrative that
14 fit with the government's story, with their argument.

15 In any event, that document, the government's theory,
16 I submit to you, one of the primary reasons, if not the primary
17 reason, why Tim Muir is in this case completely falls apart
18 right there.

19 They have argued this Ragman theory. It's stupid.
20 Tim should have never put that signature and panicked the way
21 he did. But let's not forget -- can we have 2811, please.

22 Don Brady knew about all about this settlement
23 agreement. We introduced e-mails showing Don saying, I am
24 ready to stand by and sign. Remember Mr. Muir explained that
25 Don was gone for the weekend and didn't get both the forms

HAC8TUC5

Summation - Mr. Bath

1 back.

2 We are going to look at 2811, and that's going to be
3 an e-mail.

4 Blow up the top half. Thank you, Eli.

5 2/25/10, just days before the settlement is supposed
6 to be done, Conly says to Don, Hey, they are going to close
7 this settlement, you need to overnight the originals.

8 Conly respond back says, Talk to Don. He is standing
9 by waiting for the docs to sign and FedEx back.

10 Thank you, Eli.

11 Can you show Defense 2812, please.

12 Don responds back a few minutes later to Mr. Tucker's
13 e-mail, "I stand ready to sign and return. FedEx guarantees
14 tomorrow morning."

15 The point being, it was important for us to at least
16 demonstrate to you that there wasn't any kind of fraudulent
17 deal. Brady is ready to sign. He said he is ready to sign at
18 9:00 at night, I believe a Friday.

19 Can we put up Defendants' Exhibit 2815.

20 Can we go to the signature page. Can you blow up that
21 signature.

22 We introduced the fact that Don Brady in fact signed
23 that agreement as part of the Hallinan deal.

24 Thank you, Eli.

25 Can we show Defense Exhibit 1450 now, please.

HAC8TUC5

Summation - Mr. Bath

1 That's the second part of that Hallinan agreement.

2 If we can show the signature page again.

3 Again, Don Brady signs that document.

4 Thank you, Eli.

5 So the government's theory is, well, he must be guilty
6 of these federal offenses because he panicked and put the
7 Ragman on there because he must be just untruthful or generally
8 not to be believed. But the bottom line is, as we have shown
9 you, that Brady was ready to sign, he did sign, the documents
10 got all signed. There is no suggestion that this was done to
11 deceive anybody or defraud anybody.

12 They have shown you a few other documents where Ragman
13 signed on there, but there is no connection to Tim. In fact,
14 one of the e-mails says -- the only e-mail they have shown you,
15 Tim says to Mitchell you can sign your own name.

16 The point is, that's not proof beyond a reasonable
17 doubt.

18 The *Tucker v. AMG* is another allegation they are
19 making. They are making an argument that this is a fraud
20 because Tim put the word "S" on the request. Remember that was
21 a big part of the cross-examination yesterday. How many
22 requests or did you make just one request of Conly Schulte.

23 There is no question that Conly Schulte knew about
24 that. Schulte testified about it. Schulte wrote a letter to
25 Pete Smith and said, I have got your petition. I'm not filing

HAC8TUC5

Summation - Mr. Bath

1 anything on behalf of AMG or a tribal corporation. We don't
2 come into states and we don't file things.

3 Then Conly Schulte also wrote a letter to Don Brady,
4 that we also introduced, after it was over and said, Hey, Don
5 Brady, we got the result we desired. We needed to make sure
6 this merger was going to be recognized under tribal law, and
7 that's why we did this transaction. There is nothing to be a
8 sham about it.

9 AMG was formed in '08 and purchased CLK. You saw the
10 tribal resolutions. The government again is trying to fit this
11 piece of paper, this lawsuit, to fit their narrative. It
12 doesn't show anything criminal. He is protecting Scott Tucker
13 from liabilities. That's what Pete Smith told you. What about
14 that is criminal? There is nothing about that that is
15 criminal.

16 Did they not pay, meaning AMG, when they should have?
17 Yes. Is there any involvement other than Mr. Muir knowing they
18 didn't pay in a timely fashion? Yes. But how does that
19 further this criminal enterprise? It doesn't. It doesn't
20 prove anything.

21 As I said earlier, the government cobbles together --
22 and I ask you to think about their arguments they have made and
23 the evidence they have shown -- they have cobbled together
24 either e-mails that Tim is not directly on -- maybe he is
25 copied, maybe not. One is from Tim Buckley. Tim Buckley

HAC8TUC5

Summation - Mr. Bath

1 spells Muir's name wrong. He says, well, Tim will be doing
2 these things. Tim isn't even cc'd on that e-mail. So they
3 want you to infer that because Buckley sent an e-mail to
4 another manager and Muir is mentioned there that he must be
5 working on all those things.

6 Here is what my question is. Where are the e-mails
7 from Muir that says he is actually working on those? Or where
8 is Buckley coming in to testify and saying Muir worked on some
9 of those things? That's one way to cobble together their
10 argument.

11 The other way is to call people like Crystal Grote who
12 essentially says, oh, I think Tim and Blaine and Scott knew
13 about that. Tim and Blaine and Scott knew about this. There
14 is a constant mantra by the government throughout this trial
15 without any specifics at all. And I suggest to you they are
16 doing that because they don't have any evidence on certain
17 things regarding Tim being involved or where of particular
18 matters.

19 I suggest you think about, what evidence did the
20 government not provide to you, sort of missing evidence? And
21 that is, have they shown you evidence that is contrary to Tim
22 Muir's testimony? He was on the stand for ten hours. And they
23 suggest to you on the first part of their closing, there were
24 two times that he didn't tell the truth. He changed the answer
25 on the trademark situation and then he had another issue on

HAC8TUC5

Summation - Mr. Bath

1 final act on approval on tribal land. Those are the two
2 examples they gave you that demonstrates Tim Muir is not
3 telling the truth.

4 I suggest to you they have shown you multiple,
5 multiple private e-mails between he and Tucker and he and other
6 people, occurring over years and years and years. There seems
7 to be no lack of any of those kind of e-mails.

8 Don't you think they would be able to show some e-mail
9 to you over all those years where these private e-mails are
10 engaging or bragging about criminal conduct, about taking
11 advantage of the tribe, something that is really substantive,
12 that doesn't just suggest, oh, and they get to argue this must
13 be something bad? No e-mails like that at all proven to you.
14 Nothing that shows Mr. Muir's testimony is not correct or not
15 accurate.

16 I am going to talk about the Williams' recordings for
17 a minute. If you remember Ms. Williams tells you, well, I
18 initially started recording because Gena Lankford asked me to
19 record the meetings. That's her claim. And she then went
20 looking in some closet somewhere for some recording device.
21 And because she couldn't find a recording device, then she
22 decided to use her phone.

23 So we went from authorized recording from Gena
24 Lankford, who we never heard from, by the way. An authorized
25 recording by a board member, to I couldn't find it, to I am

HAC8TUC5

Summation - Mr. Bath

1 going to use the phone and not tell anybody about it. Really?
2 Does that make any sense to you at all? That's the sequence of
3 the recordings? And she didn't tell anybody. Not only did she
4 not tell anybody, she doesn't keep them. If she is making the
5 recordings to make sure we get the board minutes right, why
6 wouldn't you transfer them to some kind of device. This is the
7 digital age. This isn't 20 years ago where I understand it is
8 hard to do that. You transfer it and keep it in the file so
9 anyone can come look at it at any time, two years from now,
10 three years from now.

11 Especially, she claims, I think this is all a bunch of
12 shenanigans. I didn't like what was going on -- remember the
13 recordings are '11 and '12. I don't like what is going on so I
14 am recording this so I can demonstrate what is bad about it.
15 Yet I don't tell anybody, I don't keep any copies, and when the
16 end comes here, this trial comes around, nobody can really tell
17 you how many recordings there are or where the recordings were
18 or how many phones there were or what the chain of custody and
19 the recordings were. Why? Because you find out she has the
20 whistleblower stuff going on. That's why.

21 Where are the ones with Tim Muir? He didn't attend
22 every board meeting, but he attended AMG board meetings. And
23 those AMG board meetings were from one and a half to three
24 hours long. What have you been provided? Like two-and-a-half
25 minutes of recordings.

HAC8TUC5

Summation - Mr. Bath

1 Where are the ones with Tim Muir on there if
2 everything was so bad? Tim said I wish they were there.

3 Carolyn Williams said, I recorded every board
4 meeting -- I think she said like 16 of them or so -- during
5 that time period. I think I pinned her down to say by late '12
6 or early '13, something like that. Maybe before then. There
7 were about 16 board meetings. Tim would have been at least at
8 one or two of them. How come we don't have any of those?
9 Where is that evidence? Why don't you hear from Tim Muir on
10 any of those tapes? Scott Tucker was shown on at least one.
11 Where are those tapes? Isn't that the best evidence? They are
12 suggesting to you it is the best evidence. I suggest to you
13 those board meetings didn't need to be taped. There were never
14 16 board meetings being taped.

15 One of the things I want you to think about for
16 ultimate control is whose money is it, who takes the money.
17 Mr. Ginsberg talked to you a little bit about that, but I would
18 like to circle back there for a second.

19 After 2009 there is no 1 percent deal. The servicing
20 agreements all got canceled. You heard that evidence. There
21 was no written contract whatsoever between the tribes and Mr.
22 Tucker. So business went forward. I guess it went forward
23 just based on a handshake or trust.

24 As Mr. Ginsberg told you, all the accounts were in the
25 tribes' names. The power of attorney was given by the tribes

HAC8TUC5

Summation - Mr. Bath

1 to Scott Tucker and it could be revoked at any time. If you
2 remember, there was evidence that it was revoked, and then
3 given back. In fact, I think the evidence was it was given
4 back after Kirkland & Ellis and Dorsey & Whitney got involved.

5 So after we had new counsel, new Joe Frazier, they
6 took away the signature authority and gave it back. That's
7 criminal? Those activities are criminal? Are Dorsey & Whitney
8 involved in the criminal activity now, Kirkland & Ellis, all
9 those people? Is there no end to the, the end of the death of
10 the conspiracy here?

11 The point I want to get to is the ultimate control.

12 Can we have Defendants' 921A.

13 You recall this is the annual report for MNE,
14 September 30, 2013. Joe Frazier is the middle. He is the new
15 guy. There is a whole new sheriff in town taking care of
16 everything.

17 Can we go to the third page, Eli.

18 You remember that this paragraph, the second-to-last
19 from the bottom, blow that up.

20 Total gross revenues, \$233 million.

21 The net income, total assets, \$189 million.

22 Now, can we go to Government Exhibit 3551, please,
23 Eli.

24 So that 921A we just saw was 2013.

25 Can we go to the RGL forensic counsel person and all

HAC8TUC5

Summation - Mr. Bath

1 these charts.

2 On the left-hand side of this chart we have the Tucker
3 receipts from '08 to '13.

4 On the right-hand side we have the Nation Management
5 fees, '08 only to '12.

6 The accountant testified I never got any information
7 past 2012. That's why I put that in there. But this is just
8 the management fees that an accountant had on the books of the
9 tribes. The \$189 million we just looked at isn't even counted
10 here. How is that? What was this supposed to represent? Is
11 this supposed to be fair representation of what the tribes got
12 versus what Tucker got? Yes, that is what it was supposed to
13 be. Is it? No. Does the 189 go on top of that and puts it at
14 220? What has the government proven to you about that 189?

15 They say in closing argument today, at the end Tucker
16 realized he couldn't get the money and so because he never
17 tried to get the money, that means he and Muir are both
18 criminals. That is another way of saying it wasn't Tucker's
19 money.

20 Chief Lankford told you they spent tens of millions of
21 dollars on corporations. It wasn't that 40 million. It was
22 the 189 million. Where is that money? Isn't that ultimate
23 control? Who owns the business gets to keep the money and gets
24 to fire people. That's what they do too. You heard testimony
25 they fired Scott Tucker.

HAC8TUC5

Summation - Mr. Bath

1 That's just the Miami, the 189. Troy told you 9 or 10
2 million. So now we are almost 200 million on top of that 41
3 million.

4 What about the Santee? Who knows. We don't have any
5 evidence about that, do we?

6 That exhibit is not worth anything to you. It doesn't
7 tell you anything. In fact, I think it's misleading. It
8 doesn't accurately tell you anything at all.

9 They had the accounts. They fired people. They kept
10 the money. That's ultimate control and that's ownership.
11 That's what that is.

12 The government asked you to rely on a number of cast
13 of characters as sort of the foundation of their case and I am
14 not going to go over everything that Mr. Ginsberg went over. I
15 think he did an effective job on that.

16 The foundation of the case begins with Rubin. That's
17 the basement of their case. That's what they are building
18 their house on top of. They call Rubin to give you all this
19 information. Rubin is essentially the ultimate expert. He
20 tells you everything you want to know. He can tell you about
21 true lender, so-called servicers, all those catch phrases that
22 were really cute between the government witnesses who had
23 immunity agreements. They are happy to give all those catch
24 phrases. And he tells you about true lender and County Bank
25 and everything else in the world.

HAC8TUC5

Summation - Mr. Bath

1 He is like those dolls in the '70s or '80 where you
2 pull the string and the doll says one phrase. That was a lie.
3 That was Rubin.

4 On the cross-examination I really was only asking him
5 one simple question. I was asking him about the 2006
6 deposition he gave, because in 2006 he was in a deposition
7 about County Bank with the New York AG's Office.

8 He testified in that deposition, under oath,
9 everything in that program was fine, there was nothing unlawful
10 about that program. And I was making sure that I understood
11 his testimony. I got up and asked him. I said, Did you
12 testify? Yes. Did you testify everything was fine, was proper
13 with that program? Yes. And that was a lie. We went through
14 that. It was like an Abbott & Costello routine. We went
15 through that multiple times.

16 Finally, I went the other way. I said, are you
17 telling me you said it was lie? No, that's not what I said
18 then. It was important because if you recall, Mr. Roth
19 established on the cross-examination of Rubin -- Rubin
20 cooperated. I don't know how many times it was. But it was
21 over three or four years he is cooperating with the government.
22 He doesn't start cooperating with this investigation until
23 almost 2015. And I submit to you all of the sudden County Bank
24 becomes a problem. Why? Because that's his capital. No pun
25 intended. That's Rubin's capital in this case. He can get

HAC8TUC5

Summation - Mr. Bath

1 some goodwill up here and maybe against Hallinan. So he says,
2 oh, County Bank, complete sham, complete fraud.

3 But then about that time, they are like wait a minute,
4 I heard you testified in '06 that there was nothing wrong with
5 County Bank. That's a problem. Imagine that conversation, the
6 government with Rubin and Rubin's lawyers. Rubin, you're no
7 good to us if you're saying County Bank is no good but you
8 testified under oath '06 it was good. We can't use you.
9 Rubin's lawyers is like, you're not going to get out of this.

10 This is exactly how this works, guys.

11 So all of the sudden Rubin is like, that was a
12 complete lie in '06 too. Now he has got a problem because
13 there are other lawyers there. Goodman was there and he says,
14 and you heard this on the stand, Goodman knew I was lying.

15 Stephen Goodman is going to put his whole career on
16 the line for Rubin to lie about County Bank in 2006. That is
17 sort of my last addition to what Mr. Ginsberg started.

18 Did they produce one document that supports anything
19 that Rubin said? Think about that. They had some service
20 agreements from Goodman, but anything at all that ever
21 corroborated Goodman? How could that possibly be so? You
22 couldn't find one document that corroborated what Goodman had
23 to say. Because it's not true.

24 Carolyn Williams. No document to support what she
25 says either. She says to you, Don was not the CEO. One of the

HAC8TUC5

Summation - Mr. Bath

1 reasons, I had no financial records. Very adamant about that.
2 Sympathetic story that Mr. Ginsberg was telling you about. Oh,
3 really?

4 What did Allison Harris, the CFO, tell you in 2011?
5 She told you that four months after Williams would have
6 started, because Williams started in June or so, four months
7 after Williams would have started, Tim Muir made sure, because
8 of the ITG audit, that 12 boxes of financial records got
9 delivered down to the Miami tribe. 12 boxes. Don had no
10 financial records according to Carolyn Williams.

11 The office couldn't be very big. She told us about
12 how she could overhear everyone's phone conversations and she
13 could see when the mail came in and all that kind of stuff.
14 Don't you think she would have noticed 12 boxes coming in? Of
15 course she did. It doesn't fit the government's narrative and
16 it doesn't fit her narrative.

17 She is on the stand for seven hours, just about. In
18 my cross-examination she says two phones. Two phones were used
19 to record because she got caught in the trick box, because she
20 had given the one phone to whoever it was, lawyer A. If that
21 happened then, how did you record any other board meetings?
22 She said, well, there was a second phone.

23 There was no second phone. She didn't record all
24 those board meetings.

25 (Continued on next page)

HacWtuc6

Summation - Mr. Bath

1

2 MR. BATH: She also claims, Well, I got fired because
3 I found a document -- remember she said she stole a bunch of
4 documents or downloaded them on a thumb drive, but unauthorized
5 documents she was grabbing up for her whistleblower stuff --
6 But I found an email where Joe Frazier was going to give Scott
7 Tucker \$100 million, and I gave that to Gena Lankford. And
8 that's why I got fired.

9 That's what she says to you. Really? Gena Lankford
10 is with the tribe. No proof of that at all, because Carolyn
11 Williams is just an untruthful witness.

12 Scott Mitchell. He's told you about, Mr. Ginsberg
13 did, that they bring him in here why? Because he looks like
14 he's in the inner circle. That's really why Mitchell gets
15 called up here, and he regales you about 2003 or '4 -- I
16 thought he said 2003, but we'll just call it '4 -- things that
17 happened in '4, '5, '6, and all the things that happened. And
18 he's the one that comes up with the catch phrase "magic
19 button." Rubin had the supposed servicers, and now Mitchell's
20 got this cutesy magic button deal. We don't see that in any
21 emails, by the way, anywhere, do we? Any corroboration of that
22 at all.

23 So Mitchell gets up here, regales us all forever and
24 ever, for a long time, and tells us all kinds of stuff. Now,
25 understand Mitchell was there. We're not saying he didn't work

HacWtuc6

Summation - Mr. Bath

1 there. But when Mr. Ginsberg gets up and asks him, he's, like,
2 I guess I wasn't there for those three years. First when he
3 asked him, Mr. Ginsberg asked, Is it possible you weren't even
4 there in those three years, there was uncomfortable silence for
5 a long, long time.

6 I don't really understand, I submit to you, and this
7 is Mr. Ginsberg asking, How does that happen? How do we come
8 to a federal trial, somebody gets up on the stand and swears to
9 tell the truth? There are two men whose liberty is at stake.
10 And we're not talking about missing a month or a day or even
11 six months, missing three years of your life. You're willing
12 to do that, and I don't know if it says more about the
13 investigation or more about Mitchell. I'll let you decide
14 that, but it should be troubling that anybody would get up on
15 the stand and either be under so much pressure or meds or has
16 memory problems, one of those three things, and just misses
17 three years of his life, but it doesn't come out until
18 cross-examination.

19 If it wasn't so serious, like a movie, it would be
20 comical. Really? Well, let me tell you about all this, I was
21 here blah-blah-blah. Really? Three questions: Were you even
22 there then? Hmm, maybe I wasn't.

23 Really? It's a federal criminal trial.

24 The presumption of innocence is enough for you to
25 acquit. You'll get an instruction, I believe, from Judge

HacWtuc6

Summation - Mr. Bath

1 Castel on that. Mr. Muir's testimony, I also submit to you, is
2 enough for you to find him not guilty. He was truthful even
3 when it hurt him, even when we talked about Ragman. He owned
4 it. He didn't run from it. He told you about, it was stupid.
5 He told you he panicked when he put that signature on the
6 Hallinan agreement. He was on the stand for ten-plus hours.
7 The government's free to ask him any question they want, to go
8 at him as long as they want.

9 Really think about that. How often does that happen?
10 The government gets to take full, free rein of this guy, and
11 the government suggests to you in their closing, Oh, well, how
12 come Mr. Muir didn't get asked these questions? And they
13 rattle off two or three different kinds of subjects. Really?

14 First of all, whose burden is it here? It's not our
15 burden. They could have asked him any of those questions that
16 they wanted. Why didn't they ask him questions about scripts,
17 detailed questions about affidavits or the Brady tapes or the
18 magic button? Why didn't they ask any of those questions?
19 Because they knew the answers wouldn't be good for them.

20 It's not a reverse analysis. It's not our burden to
21 ask every question. They can ask any question they want. And
22 I think by inference the fact they didn't ask those questions
23 is more reasonable doubt for Tim Muir.

24 I want to close by asking you to think about Tim's
25 state of mind, because this goes back to willfulness, him

HacWtuc6

Summation - Mr. Bath

1 knowingly doing something that the law forbids. He tells you
2 he spent hundreds and thousands of hours researching topics
3 involving sovereignty and sovereign immunity; tribal law;
4 e-commerce; choice of law provision; state usury law -- he read
5 the usury law and understood that it said unless otherwise
6 provided by law; the Constitution and cases he relied on; asked
7 opinions of other lawyers, who had much more experience than he
8 did. He reviewed active cases and regulatory actions and
9 reviewed pleadings and attended court hearings, and he told you
10 his belief. His belief.

11 He believed that the tribal model was lawful, and he
12 believed that sovereignty and the U.S. Constitution, the Indian
13 commerce clause, those things, in his mind, meant that they
14 could make these loans, loans that were already being made,
15 remember, when he joined in 2006; about the abrogation, unless
16 Congress takes away the power, the tribes have the power.

17 That's what his belief was. He did not believe that
18 the actions that were taking place were improper, unlawful in
19 any way; that he knew the tribal entities were formed pursuant
20 to tribal law; that they must pass laws and resolutions, and
21 that they had;

22 The contracts and choice of law provision, that the
23 tribes had the final say, and they did have the final say. The
24 controlling factors like day-to-day control, financial
25 arrangements and the type of business did not impact his belief

HacWtuc6

Summation - Mr. Bath

1 that the model was lawful.

2 So then, I ask you, Well, what evidence did we see or
3 hear that supports his state of mind? He told you about --
4 Crystal Grote actually first tells you that she had been
5 monitoring TILA disclosures for years on other companies, and
6 Tim told he'd watched regulatory actions to see if the
7 regulators had made allegations on that TILA that they were
8 unlawful, that other people had the identical, including the
9 little asterisk, language that they had. That's why he didn't
10 think, in his mind, they were violating the law as relates to
11 TILA.

12 He told you he'd known there was congressional policy
13 that tribes should seek business opportunities with no capital.
14 Tom Gamble told you the same thing. Tom Gamble said that was
15 one of the missions of the Miami tribe, to get involved in
16 businesses that had no capital.

17 The companies had been involved in lending for ten
18 years. They were in at least three different states, West
19 Virginia, Colorado and California. The government wants to
20 allege everybody was hiding. These lawyers were entering
21 appearances, the tribes and their entities were entering
22 appearances. This was all done out in the open. No one was
23 hiding anything, and that goes to Tim's state of mind.

24 Troy Little Axe told you he, in fact, met with
25 regulators. Does that sound like somebody who's a criminal,

HacWtuc6

Summation - Mr. Bath

1 who's hiding, who thinks he's committing a crime? No, it does
2 not. Tim told you there wasn't a single court decision that
3 held that the tribal model was unlawful. That went to his
4 state of mind.

5 Going back to that 2013 CLE in Washington, D.C., 200
6 lawyers in a room, with like four presenters talking about the
7 tribal model, sponsored by the American Bar Association.
8 Really? 200 lawyers from across -- I don't know where they're
9 from, but 200 lawyers talking about tribal lending, the tribal
10 model. Are they all, like, learning how to become a criminal
11 enterprise? It goes to his state of mind.

12 Finally, I'd like you to look at this last slide,
13 defendants' 1407. The email before this was Scott Tucker
14 saying to Tim about an article, "Hey, this sucks." And Tim
15 responds back to Scott: "I really don't see it that way. Look
16 at Google's, West Virginia AG's, comments." And then he, he
17 being Tim, cuts and pastes part of that article right there.
18 Tim says, "Everybody else is doing rent-a-tribe. This model is
19 not. This model really is Indian tribes." And he says, "The
20 others are going to get blown out or settled."

21 This is, like, a private email between him and Scott
22 Tucker, essentially two coconspirators in the government's
23 theory. I think this was 2011, or so, but you'll be able to
24 see that in the jury room, the exact date.

25 Does this not reflect his state of mind? He had no

HacWtuc6

1 reason to believe anybody was ever going to read this email.
2 This wasn't publicized. This wasn't a press article. This is
3 two people that worked together, the lawyer and the client, and
4 he's giving him his personal viewpoint. And if you believe Tim
5 Muir didn't believe he was committing a crime, that he wasn't
6 doing something the law forbids, then he's not guilty. He
7 never, Tim Muir never willfully believed he was committing any
8 type of crime here.

9 He acted in good faith, and the evidence supports
10 that. Tim's presumed innocent. The government has failed to
11 prove beyond a reasonable doubt that Tim's guilty. Sometimes
12 lawyers get it wrong. Sometimes their clients get sued for it,
13 but they don't get indicted for it. They don't get convicted
14 of a crime.

15 I ask you to look at all the evidence, and I ask you
16 to return a verdict of not guilty.

17 THE COURT: All right. Thank you, Mr. Bath.

18 Ladies and gentlemen, why don't you stand up and
19 stretch. If you'd like a break, you can let me know.

20 I know one of our jurors has a commitment.

21 You'd like to take a break?

22 JUROR: No, no, no. I have a commitment.

23 THE COURT: You also have a commitment? OK.

24 I think what I'll do is I will start the jury
25 instructions and finish them up tomorrow morning. We'll do it

HacWtuc6

1 that way and break it up, because they are lengthy, and they're
2 very important, but it may be a little bit more tolerable for
3 you all to hear it in two sections, and then you'll have the
4 case tomorrow morning.

5 Would it be convenient to start at 9:30 tomorrow
6 morning? OK. Let's do that. We'll start at 9:30 tomorrow
7 morning, and I'll ask you all to be here on time so we can do
8 that at 9:30, and when the instructions are finished, you will
9 then be able to begin your deliberations.

10 All right. The government, as you know --

11 Yes?

12 JUROR: I have to use the bathroom.

13 THE COURT: OK. Take a short recess and go into the
14 jury room, and the government will set up for their brief
15 rebuttal. You can turn the light on when you're ready to come
16 back out and let me know that you're ready to come back out.

17 (Jury not present)

18 THE COURT: We're on a brief recess.

19 (Recess)

20 THE COURT: I have marked as Court Exhibit 20 the
21 final jury instructions, and the verdict sheet will be 21.
22 Copies are being handed out now.

23 MR. RAVI: Thank you.

24 THE COURT: All right. Bring our jurors in, please.

25 (Jury present)

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Rebuttal - Mr. Velamoor

1 THE COURT: Please be seated.

2 Mr. Velamoor, whenever you're ready.

3 MR. VELAMOOR: Thank you, your Honor.

4 For two hours, Mr. Ravi talked about the evidence in
5 this case. He quoted from testimony. He showed emails and
6 other exhibits. He played recordings. He had so much evidence
7 he could barely fit it into two hours. He could have gone on
8 for two days. And when you have no answer to the evidence, you
9 do what the defense counsel did. You come up here and you
10 create distraction after distraction after distraction.

11 When the evidence doesn't look so good against Scott
12 Tucker or Tim Muir, then you put Carolyn Williams, the
13 secretary, on the stand, on the stand or on trial. Or you put
14 Scott Mitchell, the IT guy, on trial -- the IT guy -- for
15 getting a date wrong ten years ago. And instead you ask the
16 jurors to speculate about the investigation, about how we chose
17 our witnesses or how they chose theirs, or why it was, how many
18 times we met them for prep.

19 Apparently when witnesses provide devastating
20 evidence, it's all scripted, and when they make an innocent
21 mistake about the dates, we didn't meet them enough times,
22 rather than focusing on the evidence that the investigation
23 produced. Instead, you try to make up evidence from the
24 podium.

25 Just to be clear, the evidence comes from the podium,

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Rebuttal - Mr. Velamoor

1 comes from the exhibits; it doesn't come from the lawyers. And
2 no lawyer testified, for example, that the Nevada shell company
3 model was lawful. When that was proffered here, proposed to
4 you here, they didn't even mention a particular witness, and
5 that's because it never happened.

6 You were asked to say, Well, why does the
7 nonprosecution agreement with the tribe only include a
8 statement about the affidavits? Well, it doesn't. Take a look
9 at it. It includes admissions about several other things as
10 well.

11 A very interesting thing happened during Mr. Bath's
12 summation. He starts by saying Adrian Rubin had nothing to do
13 with his client, County Bank had nothing to do with his client.
14 Then what does he do? He spends some of his time talking about
15 Adrian Rubin. Why does he do that? Because he has nothing to
16 say about the evidence against Tom Muir. That's why Tom Bath
17 spent time talking about it to you.

18 We kept track. Mr. Ravi painstakingly went through
19 ten lies, examples of tribal lies, examples of tribal shams.
20 They barely touched any of them. They barely addressed any of
21 them, because there's no answer to any of them.

22 Let me spend a minute just to talk briefly about
23 what's not at issue. Mr. Tucker is not on trial for how much
24 money he made. He's on trial for how he made that money,
25 because he made it by flagrantly violating the law. Mr. Tucker

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Rebuttal - Mr. Velamoor

1 is not on trial for lavish spending. He's on trial because he
2 stashed the money in tribal bank accounts and spent it from
3 there, which is money laundering, to hide that the money was
4 his. This is not about the payday lending business in general;
5 it's about their payday lending business and the crimes they
6 committed in conducting that business.

7 Now, for whatever reason, they picked on particular
8 witnesses. They picked on Grote, Rubin, Williams and Mitchell.
9 And I don't want to spend too much time on any particular
10 witnesses in this case, because frankly, we could have called
11 half the witnesses we called and showed half the emails, and it
12 would still be enough to convict these guys ten times over.

13 I'll just spend a minute on the witnesses they
14 mentioned. They talked about Adrian Rubin. And look, Adrian
15 Rubin is an important witness for one part of the scheme, and
16 he does have a history of lying, and he owned up to it and you
17 should consider that. But just think about what the defense
18 attorneys want you to ultimately believe about Adrian Rubin.
19 They ultimately want you to believe that he's a 30-year-long
20 liar, but his payday lending business was pure. They want to
21 convince you he's a liar who ran a completely honest payday
22 lending business. That's what they want you to ultimately
23 believe, and that doesn't make any sense.

24 They also picked on Crystal Grote. Mr. Ginsberg
25 talked about Ms. Grote and called her a liar for the first ten

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Rebuttal - Mr. Velamoor

1 minutes and then for the next ten minutes put up her quotes on
2 the screen from her testimony, so I'm not even sure exactly
3 what it is. But Ms. Grote made clear a couple of important
4 thing, and that is the direction to lie about where they were
5 located came from those two guys. They knew about it and they
6 directed it.

7 She also said, quite clearly, that the weather thing
8 was something she came up with to implement that lie. But if
9 she was really lying, if she was trying to come up with the
10 best story to help the government, wouldn't she say she
11 discussed that weather thing with them as well? Of course she
12 would, but she didn't, because she told the truth and she told
13 the story that makes the most sense, which is the policy came
14 down from the bosses that you're supposed to lie about where
15 you're located, and the low-level people came up with ways to
16 implement it. But it's the policy that counts, and it's the
17 policy that makes them guilty.

18 Now, they also talked about Carolyn Williams, and I'm
19 not sure why they spent so much time talking about Carolyn
20 Williams, because everything that Carolyn Williams said about
21 Don Brady was corroborated by the recordings. They want you to
22 think about how she made those recordings, what her iPhone was
23 doing at the time, how many iPhones she had. That's because
24 they don't want you to actively think about what Don Brady said
25 in those recordings, because what Don Brady said in those

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Rebuttal - Mr. Velamoor

1 recordings is devastating. He made it clear in about four
2 sentences exactly what was going on in this case.

3 Scott Mitchell, the same way. They're picking on
4 Scott Mitchell. The most dramatic thing Scott Mitchell talked
5 about was the tank, but Mr. Muir admitted the tank yesterday
6 during his own testimony, so I'm not sure what the big story is
7 there.

8 But let me just be clear on Mr. Muir. He is not
9 guilty of money laundering or any of these crimes because of a
10 single check. He was involved in everything. The whole scheme
11 here was to run payments through tribal bank accounts, and he
12 was involved in all of that. The whole business was running
13 through tribal bank accounts, and he knew that.

14 Now, Mr. Muir's lawyer just tried to suggest to you
15 that he had no real involvement in the lending activities, and
16 to try to make that case, he told you that Mr. Muir wasn't
17 copied on one of the most important emails in the case,
18 Government Exhibit 1707. But Mr. Muir was copied on that
19 email. It says it right there, Tim Muir, and that email lists
20 numerous things that Mr. Muir is doing as part of this
21 business. And what's the reason why he tried to pretend to a
22 jury that Mr. Muir's not copied on this email, because this
23 puts Mr. Muir at the center of the crime, making policies,
24 making manuals, doing the things that put him in the center of
25 the lending business.

1 Mr. Muir was also at the heart of the fraudulent
2 strategy to cover up this crime. He was a huge part of the
3 scheme to hide their ownership. That's what *Tucker v. AMG* was.
4 Mr. Bath asks, How did *Tucker v. AMG* further this scheme?
5 Well, what was the point of *Tucker v. AMG*? It was to get the
6 so-called sham merger backdated to 2009. Why did he want to do
7 that? Because class action lawyers and regulators were going
8 after the business, and backdating that merger helped him do
9 that.

10 That's what Tim Muir did, and he was at the heart of
11 it, so to suggest that Tim Muir was off to the side somewhere,
12 all the evidence suggests to the contrary. He was at the heart
13 of the BA Services deal, funneling money through nominee tribal
14 bank accounts to Scott Tucker. You heard about that yesterday
15 during his cross-examination. Instead, Mr. Bath wants you to
16 think about, again, another conspiracy theory. He wants to
17 talk about this letter to the IRS that Mr. Muir wrote.

18 Let me be clear. The fact that Troy Little Axe had no
19 idea that he'd purchased a bunch of companies, I'm not running
20 away from that. That's at the heart of the government's theory
21 of this case, that these tribal people were signing on to
22 things that had no meaning. So no one's running away from
23 that, but that's not why he got charged here. He got charged
24 because he was at the heart of the lending business.

25 You're going to hear some instructions on this, so let

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Rebuttal - Mr. Velamoor

1 me just be clear. Tim Muir doesn't have to be at the same
2 level as Scott Tucker to be guilty. All right? He doesn't
3 have to be at the very top in order to be guilty of these
4 crimes. You're going to hear that from the judge, but Mr. Muir
5 was at the heart of these crimes, and he put himself at the
6 heart of these crimes with his own words. Think about the
7 number of emails that you've seen in this case, where Mr. Muir
8 describes himself as part of the team, the three of us make a
9 great team, we're killer, we're crushing it, the three of us.
10 He put himself at the center of this case through his own
11 words.

12 Ultimately, what is Mr. Muir saying about this case?
13 What he's basically saying, after hearing all the evidence, his
14 basic point to you is to stand up at the end of this thing and
15 say: Disregard all that evidence. Pretend the bad stuff in
16 the emails wasn't there. Pretend the Tucker v. AMG lawsuit
17 wasn't filled with lies, and just trust me.

18 Trust him? Trust him? Trust the guy who gave you
19 four different answers in two days on whether he asked Conly
20 Schulte to file the certificate of merger? It wasn't just the
21 change in the trademarks or the tribal approval that he changed
22 his story on. He changed his story from minute to minute. He
23 couldn't remember his own so-called legal theory as to why this
24 whole thing was lawful. He at one point asked me what he'd
25 said yesterday. I have no idea what he said yesterday.

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Rebuttal - Mr. Velamoor

1 Trust the guy who told you over and over again that he
2 was representing Indian tribes while at the same time, in
3 private emails, he's telling Tucker, in words and in actions,
4 that he's really representing Tucker? Trust that guy? That's
5 ridiculous. Ultimately, they're trying to convince you that
6 this whole business, this business that stinks, that they were
7 offering this business in good faith.

8 So why not do it honestly? If this is really some
9 kind of good faith effort to follow the law, why are they lying
10 about everything? If you believe what you're doing passes
11 muster, why send all these false affidavits to courts? Why
12 have your employees lie about where they're located? There's
13 no dispute at this point about that, so why do it? If you
14 believe that all Scott Tucker is doing is supposedly servicing
15 the loans, as they put it, and that's perfectly fine in their
16 view of the law and view of the world, why are they hiding
17 behind the curtain?

18 If you believe the tribe is doing what it needs to do
19 to make this a lawful or appropriate venture, why are you
20 creating this paper trail to make it seem like they're doing
21 much more than they are? Why do that? Well, common sense
22 tells you that if you're lying, if you're hiding, if you're
23 dodging, if you're weaving, you're doing that because you know
24 what you're doing is wrong. You know at all times you're
25 worried about getting caught, because you're covering something

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Rebuttal - Mr. Velamoor

1 up.

2 You know from this trial and from Mr. Ravi supposedly
3 that these two defendants showed no hesitation to lie. That is
4 not something that comes with any difficulty to them. But even
5 they don't lie for no reason. They couldn't have run a real
6 tribal lending business because a real tribal lending business
7 would not have resulted in \$400 million Ferraris and moneys for
8 all kinds of fun things like Aspen homes. No business in rural
9 Nebraska or rural Oklahoma was going to result in that kind of
10 money.

11 So what did they do? They created a fake tribal
12 business, but every lie they did was calculated to fill a hole
13 in that scheme. They know the business should be on tribal
14 land, so they have call center folks pretending they're calling
15 from Nebraska and Oklahoma. They know the tribes should be
16 issuing the loans, so what do they do? They stash Scott
17 Tucker's money in bank accounts, slap the tribes' names on
18 those accounts and pretend that the money is the tribes'. They
19 know that the tribes should be making the credit decisions on
20 the loans, so they create this magic button for Don Brady to
21 press. No one at this point in this trial is suggesting that
22 Don Brady's magic button was approving anything.

23 None of these lies are accidents. They're all
24 designed to cover up their crimes.

25 Let me talk a little bit about the misleading of

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Rebuttal - Mr. Velamoor

1 consumers, the false disclosures. Mr. Ravi, during his
2 closing, started with things that were not in dispute, and he
3 left out at that point the fact that these disclosures were
4 false. He can now add that to the list. If he wants to do
5 this jury address again, he can add to the list that those
6 disclosures, it's undisputed now that those disclosures were
7 false, because you never hear any argument from anyone that
8 those Truth In Lending Act disclosures were true. No one's
9 suggesting that anymore, because you can't. Simple English
10 tells you the total-of-payment boxes and the finance-charge
11 boxes are straight false. And those are material statements
12 that people relied on that you can use as a basis for wire
13 fraud as well as for the TILA accounts.

14 Now, you heard some more of these suggestions about
15 this fine print below these boxes. Well, first of all, no one
16 is at this point trying to walk you through that fine print,
17 because everybody knows that that is indecipherable. That fine
18 print doesn't make any sense, but even if it was crystal clear,
19 it wouldn't change the lies. It wouldn't make the lies above
20 them go away. There's no principle that you're going to hear
21 about that says you can lie in one part of a document and just
22 tell the truth somewhere else and everything is fine. You're
23 not going to hear anything about that.

24 And the fine-print box did nothing to help. You heard
25 and saw it. It's completely confusing, and it's designed to be

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Rebuttal - Mr. Velamoor

1 confusing. The whole purpose of having large-print disclosures
2 in clear terms is because, as normal people, you know that if
3 you put things in bigger print, they're going to get the most
4 attention. When you put the essential information in big
5 print, people rely on it, and they knew that, and so it wasn't
6 an accident that they put the lies in the big print and some
7 other information in small print.

8 It's also not an accident that they had this so-called
9 congratulations email after the fact, after people had already
10 signed up for the loan. Well, at that point it's too late.
11 People had already signed up for it, and they signed up for it
12 based on false statements.

13 If you wanted the customers to actually understand
14 what was going on, you'd present that information to them in
15 advance. But if all you want is to have a congratulations
16 email to wave around in court sometime later when someone calls
17 you to account for your false disclosures, that's why you send
18 a congratulations email after the fact, after the loan has
19 already issued.

20 I will say this last point on these disclosures. At
21 heart what their response is to these false disclosures is to
22 blame the victims for not figuring out sooner that they'd been
23 defrauded and done something to stop or protect themselves
24 before hundreds and hundreds of dollars got drained out of
25 their accounts. I won't say too much about that except to say

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Rebuttal - Mr. Velamoor

1 that you're going to hear an instruction from the judge that
2 negligence of a victim is not a defense. So even if you think
3 that the victims were careless, and frankly, it's a pretty
4 reasonable thing to rely on big-print disclosures, which
5 supposedly tell you how much a loan costs. I think that's a
6 pretty reasonable thing, but even if you think the victims were
7 careless or gullible or negligent, you're going to find out
8 that that's not a reason not to find these guys guilty.

9 You also heard something about these repeat customers,
10 and let's just be clear. Just because these people came back
11 for other loans doesn't mean they were happy customers, and I
12 think you learned about that in this case in great detail. But
13 there's evidence in this case about how only 1 percent of these
14 people were complaining, well, there's also evidence in this
15 case that these defendants were told by the Better Business
16 Bureau that the number of complaints was alarming for these
17 companies. And you also heard, on this 1 percent issue, and
18 also saw Government Exhibit 1509, a document from the company
19 itself, which says that typical organizations never hear from
20 91 percent of its unhappy customers. That's for a typical
21 organization. Imagine what it is for this organization. I
22 don't think the 1 percent number is distracting.

23 And you know why some of these people came back for
24 more loans. You learned about that in this case, because you
25 got to meet Athena Sanchez and people like her. And you found

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Rebuttal - Mr. Velamoor

1 out that she didn't even find out she'd been defrauded until
2 the third loan. Why is that? Because they set up this scheme
3 so that it would work that way. They would take small amounts
4 of money in multiple increments over a long period of time.
5 Take 90 at a time, take 90 at a time, take 0- at a time and
6 hope people don't notice. And they end up, when this loan is
7 over, in the same financial problems they were in before so
8 they need another loan and they get another loan, and this
9 happens again, and happens over and over again. And finally
10 they realize what's going on, but by then it's too late.
11 That's how this scheme was structured, so the fact that there
12 are repeat customers doesn't explain away the scheme. They
13 explain how the scheme worked.

14 I also want to spend a little bit of time on this
15 issue of tribal ownership, and I just want to make one thing
16 clear on this. When you're going through this case, focus on
17 the elements of the offenses to determine what issues
18 ultimately matter. And when you read the elements and you hear
19 the elements about the first four counts for unlawful lending,
20 you're not going to hear anything that says that Mr. Muir
21 effectively has to own this business in order for him to be
22 guilty. You're going to hear about how they needed to be
23 involved in extending illegal loans, and that's what they did.
24 So I don't want you to get distracted by this idea that this
25 question of tribal ownership hangs over the entirety of this

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Rebuttal - Mr. Velamoor

1 case. It doesn't. Of course they didn't own it. You've seen
2 abundant evidence that the tribes did not own this business,
3 but regardless of your ultimate view on that issue, this does
4 not hang over the entire case.

5 Now there is this, which you're going to hear about,
6 advice-of-counsel issue, with respect to these first four
7 counts, and the tribal role is in some ways relevant to that.
8 But how is it relevant? Well, it's relevant to the extent it's
9 relevant to the advice that Mr. Tucker got, and Mr. Tucker got
10 advice about the role that the tribes should play. You saw
11 some of that advice. You saw Ellen Bachman's letter and you
12 saw good things as well. And you saw that nowhere does it say
13 that it's sufficient if the tribes quote/unquote owned the
14 business. What it said, on the contrary, is paper ownership is
15 not enough. You can't just run your business through a tribal
16 corporation; that it matters where the business takes place,
17 that it take place on tribal lands; that it matters who has
18 ultimate decision authority on issuing the loans, who provided
19 the capital. It asks all those questions.

20 So is ownership some part of that? Yes, but again,
21 whatever you ultimately do on this issue of tribal ownership,
22 if you conclude for some reason that the tribes owned this
23 business, that is not going to save these people, certainly not
24 on the first four counts.

25 On the wire fraud counts, again, focus on the

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Rebuttal - Mr. Velamoor

1 elements. There are at least two different ways that the
2 defendants are guilty of wire fraud. One is just by the
3 disclosures we just talked about, so again, they could be
4 guilty of wire fraud here regardless of what you think about
5 who owns this business, or who quote/unquote owns this
6 business.

7 Now, the tribes didn't really own this business, and I
8 think that's clear. The tribes were never really the lenders.
9 And what's their argument ultimately that they did? Well,
10 ultimately their argument that they did focuses primarily on
11 what happened at the end of the scheme, as the scheme was
12 starting to fall apart. That's really where they focus,
13 because they really have nothing to say about what was going on
14 in the scheme for years, beginning in the late '90s for
15 Mr. Tucker and Mr. Muir beginning in 2006. They have nothing
16 to say about all those years, so they start to focus on what
17 happens at the end, and you guys know. You've learned what
18 happened at the end.

19 Before I talk about what changed at the end, let's
20 talk about what didn't change, because most things didn't
21 change at the end in the 2012 and 2013 period up to the end of
22 the conspiracy. The business did not magically move to tribal
23 lands in 2012 and 2013. It stayed where it was in Overland
24 Park. Tucker and Muir remained in control of that business in
25 Overland Park. They continued to operate that business in

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Rebuttal - Mr. Velamoor

1 Overland Park. The loans continued to go out from Overland
2 Park.

3 So, much more stayed the same than changed during that
4 end period, but some things certainly did change. And what
5 prompted these things to change? First, there's this news
6 article you heard a lot about, which brought a lot of bad
7 publicity and caused a lot of concern, concern that it would
8 bring more attention to the business, and that's in end of
9 2011. And then you hear about this FTC lawsuit, which comes,
10 which is of grave concern to everyone, including to the tribes,
11 who had grave concerns about having problems with federal
12 regulators. You heard about that from Chief Gamble and others.
13 Ultimately, you heard about a grand jury criminal subpoena at
14 the end of 2013.

15 All these things did happen, and they caused people to
16 behave differently, and all of a sudden, one of the tribes
17 started to try to figure out what's going on here, and they
18 tried to take more control over bank accounts. But again,
19 sure, did they take some more control over bank accounts in the
20 end of 2012? Yes, but a bunch of money still went to Scott
21 Tucker in the end of 2012 through this BA licensing agreement,
22 tens and tens of millions of dollars. So again, a lot of
23 things remained the same. But look, Mr. Ginsberg and Mr. Bath
24 asked a fair question. They asked the question, How did the
25 tribes, particularly the Miami tribe, end up with all this

1 money?

2 It's a fair question, so let's answer it.

3 Now, what was the deal? In most of the scheme, the
4 deal was pretty simple between Tucker and the tribes. Tucker
5 says to the tribes: You guys hold onto my money, in an account
6 with your name on it, and I'll give you 1 percent of what I
7 make, and if someone comes calling or complaining, you tell
8 those people that the money's yours.

9 That was the deal. It was a simple deal, and for many
10 years, Mr. Tucker had an understanding with people like Brady,
11 Gamble, all these people, that they would do that. They would
12 pretend the money was theirs and they would get their 1 percent
13 and everyone would be happy. But then, like all schemes, this
14 one didn't last forever. The things we talked about happened:
15 the article, the FTC, criminal investigation, IRS audits. So
16 people start to change. Brady gets fired. Gamble loses his
17 job. Boards start to be concerned about what's going on, and
18 so people start to behave differently.

19 Mr. Tucker loses his partner in crime with the tribes.
20 Brady gets fired, Gamble gets voted out, like I said. And then
21 what happens at the end? The money is sitting there in tribal
22 bank accounts. Well, look, the scheme all along has been, the
23 whole defense that Mr. Tucker has been planning with Mr. Muir's
24 help all along, is that "it's not really my money." So what's
25 the last thing that Mr. Tucker can do when all these law

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Rebuttal - Mr. Velamoor

1 enforcement agencies are looking at this? The last thing, the
2 last thing that he could do at that point was to go and say,
3 That's my money. He might as well just plead guilty at that
4 point, right? Because his whole defense, he'd be giving up his
5 whole defense, admitting the whole thing was a sham.

6 THE COURT: Mr. Velamoor, you have to wind up your
7 summation.

8 MR. VELAMOOR: So that money just stays in the bank
9 accounts. It's just the cost of doing business. He leaves it
10 there.

11 Here's a quick example that's very similar. The fact
12 that he leaves that money there, that doesn't change the \$40
13 million that he took out before. He didn't give that money
14 back. Nobody asked him to.

15 Think of a simple example. A drug dealer rents out an
16 apartment. He leaves a bunch of money in the basement. He
17 finds out that law enforcement knows about this apartment.
18 He's not going to go back there and take his money back. So he
19 gives up the apartment, he leaves the money and the landlord
20 walks in and takes the money and says, This is kind of nice.
21 And what happens? Law enforcement comes along and takes the
22 money back. He forfeits it. And that's what we did, we took
23 most of it back.

24 Contrast that with the Kickapoo situation, which was
25 early in the scheme. Tucker just took the money away. He

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Rebuttal - Mr. Velamoor

1 didn't leave it there for the Kickapoo. Russell Bradley
2 testified about that.

3 Let me just lastly end it with the resolutions.
4 Because, look, no one here is suggesting that all tribal
5 paperwork for everything tribes do is meaningless or not
6 important. Nobody's suggesting that. We're suggesting that
7 the paperwork in this particular case was meaningless, and if
8 you care about respecting tribes and tribal paperwork and
9 tribal resolutions, the tribal processes, you should be
10 offended by the way they manipulated those things in this case
11 and used them for their own benefit. So no one's saying those
12 things are meaningless.

13 Now, what the tribal paperwork is in this particular
14 case is Scott Tucker and Tim Muir's last hustle. This is what
15 they've been planning all along, that someone calls them to
16 account, holds them accountable for what they were doing, they
17 would walk up with a big sack of paper, like they did in this
18 case, and they'd drop it in a courtroom like this and they'd
19 try to convince people that the tribes were really involved in
20 that business. And the cheapest, easiest way to do that is
21 with paperwork. The way to hide the truth is paperwork. But
22 this jury, you know more than that. You know the truth behind
23 the paperwork.

24 You saw a resolution saying that Allison Harris was
25 the CFO of AMG, but you also met Allison Harris and so you know

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Charge

1 that's not true. You saw false affidavits saying that these
2 tribal officials were controlling and operating these
3 businesses, but you heard from the tribal officials and they
4 told you they were false. You saw board minutes recounting
5 supposedly the words of Chief Gamble about the licensing
6 agreement, but you also met Chief Gamble.

7 THE COURT: All right. Finish it up.

8 MR. VELAMOOR: You heard him try to say those words,
9 and you knew when he couldn't say them that the words weren't
10 his. They were their words; they were their plan to escape
11 responsibility all along.

12 Ladies and gentlemen, buried below all the paperwork
13 they created, the fancy legal evidence they tried to hide
14 behind, buried below all that what you'll find is a single
15 mother trying to put a smile on her kids' face at Christmas; a
16 college student who needed money to visit his grandmother, and
17 he came here to testify on the heels of an overnight shift at
18 Target. You'll find a newlywed from California with a baby on
19 the way who fell behind on his bills; a mother from the Bronx
20 paying for college, high school, babysitting, and you'll find a
21 war veteran from Iraq suffering from PTSD and in need of a
22 little help. You'll find millions more like them around the
23 country and including here in New York. None of these people
24 were looking for free money.

25 For years, Scott Tucker and Tim Muir exploited and

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1 cheated these people in their time of need. They ran roughshod
2 over courts and regulators. They were trying to enforce laws
3 that were in place to protect these people, and they tried to
4 cover it all up with lies. This case really was about the lies
5 and greed of those two men.

6 THE COURT: All right. Thank you, Mr. Velamoor.

7 MR. VELAMOOR: We'd ask you to find them guilty.

8 THE COURT: Thank you.

9 Ladies and gentlemen, you can stand up and stretch.

10 Members of the jury, you have now heard all of the
11 evidence in the case as well as the final arguments of the
12 parties. We have reached the point where you are about to
13 undertake your final duties as jurors. You have paid careful
14 attention to the evidence. I am confident that you will act
15 together with fairness and impartiality to reach a just verdict
16 in the case.

17 My duty is to instruct you as to the law, and it is
18 your duty to accept these instructions of law and to apply them
19 to the facts as you determine them.

20 On these legal matters, you must take the law as I
21 give it to you. If any attorney has stated a legal principle
22 different from any that I state to you in my instructions, it
23 is my instructions you must follow. You must not substitute
24 your own ideas of what the law is or ought to be.

25 You are not to infer from any of my questions or

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1 rulings or anything else I have said during this trial that I
2 have any view as to the credibility of the witnesses or how you
3 should decide this case.

4 As members of the jury, you are the sole and exclusive
5 judges of the facts. You pass upon the evidence. You
6 determine the credibility of the witnesses. You resolve such
7 conflicts as there may be in the testimony. You draw whatever
8 reasonable inferences you decide to draw from the facts as you
9 have determined them. You determine the weight of the
10 evidence.

11 It is the duty of the attorneys to object when the
12 other side offers testimony or other evidence that the attorney
13 believes is not properly admissible. Therefore, you should
14 draw no inference from the fact that an attorney objected to
15 any evidence. Nor should you draw any inference from the fact
16 that I sustained or overruled an objection.

17 From time to time, the lawyers and I had sidebar
18 conferences and other conferences out of your hearing. These
19 conferences involved procedural and other matters, and none of
20 the matters relating to them should enter into your
21 deliberations.

22 Your verdict must be based solely upon the evidence
23 developed at trial, or the lack of evidence. It would be
24 improper for you to consider any personal feelings you may have
25 about the defendants' race, religion, national origin, sex or

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1 age. The parties in this case are entitled to a trial free
2 from prejudice, and our judicial system cannot work unless you
3 reach your verdict through a fair and impartial consideration
4 of the testimony.

5 Similarly, under your oath as jurors, you are not to
6 be swayed by sympathy. Once you let fear, prejudice, bias or
7 sympathy interfere with your thinking, there is a risk that you
8 will not arrive at a just verdict. Your verdict must be based
9 exclusively upon the evidence, or the lack of evidence.

10 The fact that the prosecution is brought in the name
11 of the United States of America entitles the government to no
12 greater and no lesser consideration than accorded to any other
13 party to a litigation. All parties, whether the government or
14 an individual, stand as equals under the law.

15 The two defendants in this case, Scott Tucker and
16 Timothy Muir, have separately entered pleas of not guilty to
17 the indictment. As I told you before, the law presumes a
18 defendant to be innocent of all charges against him. I
19 therefore instruct you that each defendant is to be presumed by
20 you to be innocent throughout your deliberations until such
21 time, if ever, that you, as a jury, are satisfied that the
22 government has proven its case beyond a reasonable doubt.

23 The presumption of innocence alone is sufficient to
24 require an acquittal of a defendant unless and until, after
25 careful and impartial consideration of all the evidence, you,

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1 as jurors, are convinced unanimously of a defendant's guilt
2 beyond a reasonable doubt.

3 The question that naturally arises is: what is a
4 reasonable doubt? The words almost define themselves. It is a
5 doubt founded in reason and arising out of the evidence, or the
6 lack of evidence. It is a doubt that a reasonable person has
7 after carefully weighing all the evidence. Proof beyond a
8 reasonable doubt, therefore, must be proof of such a convincing
9 nature that a reasonable person would not hesitate to rely and
10 act upon it in matters of the most importance in his own or her
11 own personal affairs.

12 Reasonable doubt is a doubt that appeals to your
13 reason, your judgment, your experience, your common sense. It
14 is not a caprice or whim; it is not speculation. It is not an
15 excuse to avoid the performance of an unpleasant duty. It is
16 not sympathy for a defendant.

17 The burden of proof here is upon the prosecution to
18 prove the guilt of each defendant beyond a reasonable doubt.
19 It must satisfy this burden as to each and every element of the
20 crimes charged. The burden never shifts to a defendant. The
21 law never imposes upon a defendant in a criminal case the
22 burden of calling any witnesses or producing any evidence. The
23 fact that one party called more witnesses and introduced more
24 evidence does not mean that you should find in favor of that
25 party. It is the quality of the evidence that matters.

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1 If, after a fair and impartial consideration of all
2 the evidence, you can honestly say that you are not satisfied
3 of the guilt of a defendant -- that is, if you have such a
4 doubt as would cause you, as a prudent person, to hesitate
5 before acting in matters of importance to yourself -- then you
6 have a reasonable doubt. In that circumstance, it is your duty
7 to return a not guilty verdict for that defendant.

8 On the other hand, if, after a fair and impartial
9 consideration of all the evidence, you can honestly say that
10 you are satisfied of the guilt of a defendant and that you do
11 not have a doubt that would prevent you from acting in
12 important matters in the personal affairs of your own life,
13 then you have no reasonable doubt. Under that circumstance,
14 you should return a guilty verdict for that defendant on that
15 particular count.

16 The evidence in this case is the sworn testimony of
17 the witnesses, the exhibits received into evidence and any
18 stipulations made by the parties. By contrast, and you've
19 heard me say this before, the questions of a lawyer are not
20 evidence. It is the witness's answers that are evidence, not
21 the questions standing alone.

22 Testimony that has been stricken or excluded by me, or
23 I've sustained an objection, is not evidence and may not be
24 considered by you in rendering your verdict. If I instruct you
25 that evidence is received for only a limited purpose -- in

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1 other words, it may not be considered for the truth of its
2 content, only as it may bear on state of mind, and there are
3 other areas where I gave you limiting instructions -- then you
4 must consider it only for that limited purpose.

5 Arguments by lawyers are not evidence, because the
6 lawyers are not witnesses. What the lawyers have said to you
7 in their openings and closings was intended to help you
8 understand the evidence. As I said in the case of legal
9 principles, a similar thing is true with facts. If any lawyer
10 has made a statement during the closing argument that is
11 different from your recollection of the evidence, it is your
12 recollection of the evidence that controls. Of course, any
13 statements I have made during the trial also are not evidence.

14 To constitute evidence, exhibits first must be
15 admitted or received in evidence. Exhibits marked for
16 identification but not admitted are not evidence, nor are
17 materials brought forth only to refresh a witness's
18 recollection.

19 It is for you alone to decide the weight, if any, to
20 be given to the testimony you have heard and the exhibits you
21 have seen.

22 Generally, there are two types of evidence that you
23 may consider in reaching your verdict. One type is direct
24 evidence. Direct evidence is when a witness testifies about
25 something he or she knows by virtue of his or her own senses --

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1 something he or she has seen, felt, touched, smelled or heard.
2 The other type is circumstantial evidence, which is evidence
3 from which you may infer the existence of certain facts. Let
4 me give you an example to help you understand the difference.

5 If you were outside this morning, standing in the
6 rain, getting wet and looking at that dark cloud pouring water
7 on you, you would have direct evidence that it was raining.
8 But now I want you to consider a very different situation.
9 Let's say you were in this courtroom, and let's say all the
10 windows were covered, and that when you came to court in the
11 morning, it was a bright, sunny day. The windows are covered,
12 so you can't look out and see what's going on. Now, imagine in
13 this hypothetical situation that the doors of the courtroom
14 opened up and one person walked in with a raincoat that was
15 visibly wet, and a few minutes later, someone else came in with
16 an umbrella that was wet, dripping wet. On the combination of
17 those facts, it would be reasonable for you to infer that it
18 had been raining.

19 That is all there is to circumstantial evidence. You
20 infer, on the basis of reason and experience and common sense,
21 from one established fact the existence or nonexistence of some
22 other fact.

23 Circumstantial evidence is of no less value than
24 direct evidence. As a general rule, the law makes no
25 distinction between direct evidence and circumstantial

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1 evidence. It simply requires that your verdict be based on all
2 the evidence.

3 You have had the opportunity to observe all the
4 witnesses. It is now your job to decide how believable each
5 witness was in his or her testimony. You are the sole judges
6 of the credibility of each witness and of the importance of his
7 or her testimony.

8 You should carefully scrutinize all of the testimony
9 of a witness, the circumstances under which the witness
10 testified, the impression the witness made when testifying, and
11 any other matter in evidence that may help you decide the truth
12 and the importance of each witness's testimony.

13 In other words, in assessing credibility, you may size
14 up a witness in light of his or her demeanor, the explanations
15 given and all of the other evidence in the case. In making
16 your credibility determinations, use your common sense, your
17 good judgment and your everyday life experiences.

18 If you believe that a witness knowingly testified
19 falsely concerning any important matter, whether at trial or in
20 a prior proceeding, you may distrust the witness's testimony
21 concerning other matters. You may reject all of the testimony
22 or you may accept such parts of the testimony that you believe
23 are true and give it such weight as you think it deserves.

24 In deciding whether to believe a witness, you may take
25 into consideration any evidence of hostility or affection that

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1 the witnesses may have towards one of the parties. Likewise,
2 you should consider evidence of any other interest or motive
3 that the witness may have in cooperating with a particular
4 party. You should also take into account any evidence that a
5 witness or party may benefit in some way from the outcome of
6 the case.

7 It is your duty to consider whether the witness has
8 permitted any bias or interest to color his or her testimony.
9 If you find that a witness is biased, you should view his or
10 her testimony with caution, weigh it with care and subject it
11 to close and searching scrutiny.

12 Of course, the mere fact that a witness is interested
13 in the outcome of the case does not mean that he or she has not
14 told the truth. It is for you to decide from your observations
15 and applying your common sense and experience and all the other
16 considerations mentioned whether the possible interest of any
17 witness or of any party has intentionally or otherwise colored
18 or distorted his or her testimony. You are not required to
19 disbelieve an interested witness. You may accept as much of
20 his or her testimony as you deem reliable and reject as much as
21 you deem unworthy of acceptance.

22 You have heard testimony from government witnesses who
23 pleaded guilty to charges. You are instructed that you are to
24 draw no conclusions or inferences about the guilt of any
25 defendant from the fact that a prosecution witness pled guilty

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1 to charges, even if they are somehow related to the charges
2 against the defendants. The decision of each witness to plead
3 guilty was a personal decision about his or her own guilt. It
4 may not be used by you in any way as evidence against or
5 unfavorable to either of the defendants on trial here.

6 Experience will tell you that the government must rely
7 on the testimony of witnesses who admit to participating in
8 various crimes. The law allows the use of accomplice
9 testimony. The testimony of an accomplice may alone be enough
10 to establish an element of a crime if the jury believes that
11 the testimony establishes that element beyond a reasonable
12 doubt.

13 However, because of the possible interest an
14 accomplice may have in testifying, an accomplice's testimony
15 should be scrutinized with special care and caution. It does
16 not follow that simply because a person has admitted
17 participating in one or more crimes, he or she is incapable of
18 telling the truth about what happened.

19 Like the testimony of any other witness, the testimony
20 of an accomplice witness should be given such weight as it
21 deserves in light of the facts and circumstances before you,
22 taking into account the witness's demeanor and candor, the
23 strength and accuracy of his or her recollection, his or her
24 background, and the extent to which his or her testimony is or
25 is not corroborated by other evidence in the case.

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1 You may consider whether an accomplice witness -- like
2 any other witness -- has an interest in the outcome of the
3 case, and if so, whether it has affected his or her testimony.

4 In evaluating the testimony of an accomplice witness,
5 you should ask yourself whether the accomplice would benefit
6 more by lying or by telling the truth. Was his or her
7 testimony made up in any way because he believed or hoped that
8 he or she would receive favorable treatment from testifying
9 falsely? Or did he or she believe that their interests would
10 be best served by testifying truthfully? If you believe that
11 the witness was motivated by hopes of personal gain, was the
12 motivation one that would cause him to lie, or was it one that
13 would cause him to tell the truth? Did this motivation color
14 his or her testimony?

15 If you find that the testimony was false, you should
16 reject it. However, if, after a cautious and careful
17 examination of an accomplice witness's testimony and assessment
18 of his or her credibility, you are satisfied that the witness
19 told the truth, you should accept it as credible and act upon
20 it accordingly.

21 As with any witness, the issue of credibility need not
22 be decided in an all-or-nothing fashion. Even if you find a
23 witness testified falsely in one part, you still may accept his
24 testimony in other parts, or you may disregard all of it. This
25 is a determination entirely for you, the jury.

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1 The testimony of a witness may be discredited by
2 showing that the witness testified falsely concerning a
3 material matter, or by evidence that at some other time the
4 witness said or did something, or failed to say or do
5 something, which is inconsistent with the testimony the witness
6 gave at this trial.

7 Here, you have heard evidence that witnesses made
8 statements on earlier occasions that counsel argue are
9 inconsistent with the witness's trial testimony. Evidence of a
10 prior inconsistent statement may not be considered by you as
11 affirmative evidence of the fact asserted in the statement.
12 Evidence of the prior inconsistent statement was placed before
13 you for the more limited purpose of helping you decide whether
14 to believe the trial testimony of the witness who contradicted
15 him or herself. If you find that the witness made an earlier
16 statement that conflicts with his or her testimony, you may
17 consider that fact in deciding how much of his or her
18 testimony, if any, to believe. If you believe that a witness
19 has been discredited in this manner, it is exclusively your
20 right to give the testimony of that witness whatever weight you
21 think it deserves.

22 In making this determination, you may consider whether
23 the witness purposely made a false statement or whether it was
24 an innocent mistake; whether the inconsistency concerns an
25 important fact, or whether it has to do with a small detail;

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1 whether the witness had an explanation for the inconsistency,
2 and whether that explanation appealed to your common sense.

3 You have heard evidence during the trial that
4 witnesses have discussed the facts of the case and their
5 testimony with the lawyers before the witness appeared in
6 court.

7 You may consider that fact when you are evaluating a
8 witness's credibility, but there is nothing either unusual or
9 improper about a witness meeting with lawyers before testifying
10 so that the witness can be aware of the subjects he or she will
11 be questioned about, focus on those subjects and have the
12 opportunity to review relevant exhibits before being questioned
13 about them in court. Such consultation helps conserve your
14 time and the Court's time. In fact, it would be unusual for a
15 lawyer to call a witness without such consultation.

16 You may not draw any inference, favorable or
17 unfavorable, from the fact that any person in addition to the
18 two defendants is not on trial here. You also may not
19 speculate as to the reasons why other persons are not on trial.
20 Nor may you consider the fact that the government has charged
21 others who are not being tried here. Those matters are wholly
22 outside your concern and have no bearing on your function as
23 jurors.

24 (Continued on next page)

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1 THE COURT: There are persons whose names you have
2 heard during the course of the trial but who did not appear
3 here to testify. I instruct you that each party had an equal
4 opportunity, or lack of opportunity, to call any of these
5 witnesses. Therefore, you should draw no inference and reach
6 no conclusion as to what they would have testified to had they
7 been called. Their absence should not affect your judgment in
8 any way.

9 You should, however, remember my instruction that the
10 law does not impose on a defendant in a criminal case the
11 burden or duty of calling any witnesses or producing any
12 evidence.

13 Under our Constitution, a defendant has no obligation
14 to testify or to present any evidence, because it is the
15 government's burden to prove the defendant guilty beyond a
16 reasonable doubt. In this case, one of the defendants, Timothy
17 Muir, did testify, and he was subject to cross-examination like
18 any other witness. You should evaluate and examine his
19 testimony, just as you would the testimony of any other
20 witness.

21 One of the defendants, Scott Tucker, did not testify.
22 That burden of proof remains with the government throughout the
23 trial and never shifts to the defendant. So the burden of
24 proof to prove the case beyond a reasonable doubt remains with
25 the government and a defendant is never required to prove that

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1 he is innocent.

2 You may not attach any significance to the fact that
3 Mr. Tucker did not testify. No adverse inference against him
4 may be drawn by you because he did not take the witness stand.
5 You may not consider this against Mr. Tucker in any way in your
6 deliberations in the jury room.

7 Some of the exhibits that were admitted into evidence
8 were in the form of charts and summaries. For these charts and
9 summaries that were admitted into evidence, you should consider
10 them as you would any other evidence. You may consider the
11 underlying evidence in evaluating the charts.

12 There is no legal requirement that the government
13 prove its case through any particular means. While you are to
14 carefully consider the evidence introduced by the government,
15 you are not to speculate as to why law enforcement used the
16 techniques that they did or why they did not use other
17 techniques. Your concern is to determine whether, on the
18 evidence or the lack of evidence, the guilt of a defendant on a
19 particular count has been proven beyond a reasonable doubt.

20 Among the exhibits received into evidence, some
21 documents are redacted. Redacted means that part of the
22 document was taken out. You are to concern yourself only with
23 the part of the exhibit that has been admitted into evidence.
24 You should not consider or speculate on any possible reason why
25 other parts of the documents have been deleted.

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1 In this case you heard evidence in the form of
2 stipulations of testimony. A stipulation of testimony, as I
3 told you I think at the time, is an agreement between the
4 parties that, if called as a witness, the person would have
5 given certain testimony. You must accept as true the fact that
6 the witness would have given that testimony.

7 You have also heard evidence in the form of
8 stipulations of fact. A stipulation of fact is an agreement
9 between the parties that a certain fact is true. You must
10 regard such agreed-upon facts as true.

11 The weight or importance of the testimony or the fact
12 is a matter for you, the jury, to decide.

13 The government has offered evidence to show that on a
14 different occasion, defendant Scott Tucker engaged in conduct
15 that it views as similar to the conduct charged in the
16 indictment. The government offered this evidence to endeavor
17 to establish what it views as Mr. Tucker's intent and
18 knowledge, and the absence of mistake or accident as to the
19 offenses charged in the indictment.

20 You will recall there was evidence of a prior
21 conviction that was offered and received on this basis. You
22 may not consider this evidence as a substitute for proof that
23 Mr. Tucker committed the crimes charged in this indictment.
24 Nor may you consider this evidence as proof that Mr. Tucker has
25 a criminal personality or a bad character or propensity to

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1 commit any kind of a crime. The evidence of Mr. Tucker's prior
2 conviction may not be considered by you for any other purpose
3 than what I explained to you.

4 This evidence may not be considered in any respect as
5 to defendant Timothy Muir.

6 Recordings of conversations have been received into
7 evidence and played for you. Transcripts of these recorded
8 conversations have also been furnished to you. Transcripts of
9 the conversations are being given to you solely for your
10 convenience and to assist you in following conversations or
11 identifying speakers.

12 The tapes themselves are the evidence in the case, and
13 the transcripts are not evidence, they are merely an aid to
14 listening. If you perceive any difference between the
15 transcripts and the recordings, it is the recordings you should
16 consider, and not the transcripts.

17 I instruct you that anything you may have seen or
18 heard about this case outside the courtroom is not evidence and
19 must be disregarded. Indeed, as I have instructed you
20 throughout the case, you may not read, view, or listen to any
21 media or press report or Internet or social media posting about
22 this case or about the people, companies, or issues referred to
23 during the trial. Your verdict must be based solely on the
24 evidence or lack of evidence that came out in this courtroom
25 and the Court's instructions on the law.

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1 In your deliberations and in reaching your verdict,
2 you must consider each count separately, and you must weigh the
3 evidence as to each charged defendant separately for each
4 count, and determine whether the government has carried its
5 burden of proof with respect to that defendant and that charge.
6 I will provide you with a verdict form, and you will need to
7 report the results of your deliberations for each defendant on
8 each count on the verdict form. To do so, you will need to
9 keep track during your deliberations of which defendant and
10 which charge you are considering and the legal elements
11 applicable to the charge. You are to proceed through the
12 questions in the verdict form in the order they are presented.
13 I will give you additional copies of the verdict form so that
14 you can have them during your deliberations, so each of you can
15 have a copy. But you will only have the one verdict form,
16 returned at the conclusion of the case, signed and dated by
17 your foreperson.

18 I will also give you two copies of the indictment.
19 The indictment, I will not read it, but it will be with you in
20 the jury room, and you should remember the indictment is not
21 evidence. It's the allegations in this case and it's what the
22 government must prove. That's what the indictment is.

23 The indictment contains 14 counts. Each count
24 constitutes a separate offense or crime. You must consider
25 each count of the indictment separately, and you must return a

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1 separate, unanimous verdict as to each count and to each
2 defendant separately.

3 You may only find a defendant guilty of a particular
4 count if the government has proven each element of the offense
5 charged with respect to that count beyond a reasonable doubt
6 against that defendant. Your verdict as to one count or one
7 defendant should not control your decision as to any other
8 count or any other defendant.

9 The defendants, Scott Tucker and Timothy Muir, have
10 been charged in this indictment, and as I said, it's just a
11 accusation. It's the means by which a criminal case is
12 started. It creates no presumption and permits no inference
13 that a defendant is guilty. You are to give no weight to the
14 fact that an indictment has been returned against the
15 defendants.

16 I am going to summarize the structure of the
17 indictment and the charges, and then we will break before I
18 give you instructions on the individual counts.

19 There are 14 charges, and they fall into two types of
20 charges: Conspiracy charges and substantive charges. I will
21 explain the difference between those two concepts as I go
22 along.

23 Count One charges that the defendants were members of
24 a conspiracy to operate an enterprise that collected one or
25 more unlawful debts. Counts Two, Three and Four charge that

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1 the defendants, through the enterprise, collected unlawful
2 debts. So Count One is a conspiracy count, and Counts Two,
3 Three and Four are substantive counts.

4 Count Five charges that the defendants were members of
5 a conspiracy to commit wire fraud by misrepresenting the terms
6 and the identity of the lenders of the loans extended by the
7 enterprise. Count Six charges the defendants with committing
8 the actual crime of wire fraud by misrepresenting the terms and
9 lenders of the loans extended by the enterprise. So Count Five
10 is a conspiracy count and Count Six is a substantive count.

11 Count Seven charges that the defendants were members
12 of a conspiracy to commit money laundering. Counts Eight and
13 Nine charge the defendants with the actual crimes of money
14 laundering. So Count Seven is the conspiracy count and Counts
15 Eight and Nine are the substantive counts.

16 I assure you I am going to go through the elements of
17 each of these counts, but I am giving you kind of the overview.

18 Counts Ten through Fourteen charge that the defendants
19 gave false and inaccurate information, and failed to provide
20 information they were required to provide under federal law,
21 and used a chart or table so as to consistently understate the
22 annual percentage rate of loans, by making disclosures that
23 materially understated the true cost of loans extended by
24 lenders.

25 So you can see from what I have given you in the

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1 overview that there are three different conspiracies charged in
2 the indictment. A conspiracy is an agreement of two or more
3 people to join together to accomplish some unlawful purpose.
4 You may find a defendant guilty of the crime of conspiracy even
5 if a substantive crime that was the object of the conspiracy is
6 not proven.

7 Both defendants, Mr. Tucker and Mr. Muir, have pleaded
8 not guilty to all counts of the indictment.

9 By presenting a defense and pointing out evidence to
10 you, the defendants have not assumed any burden of proof. The
11 burden remains on the government to prove each element and
12 every element of the crimes charged beyond a reasonable doubt.
13 In fact, no defendant had to present any defense. Because a
14 defendant has presented a defense, you can consider that
15 defense in deciding if the government has proven its case
16 beyond a reasonable doubt.

17 Now, the indictment refers to various dates. I
18 instruct you that it does not matter if a specific event is
19 alleged to have occurred on or about a certain date or month
20 but the testimony or other evidence indicates that in fact it
21 was a different date or month. It is also not essential that
22 the government prove that a conspiracy started and ended on any
23 specific date. The law requires only a substantial similarity
24 between the dates alleged in the indictment and the dates
25 established by the evidence. Further, it is not required that

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1 the defendant you are considering committed a charged crime
2 throughout the entire period charged in a particular count; it
3 is sufficient for the government to prove beyond a reasonable
4 doubt that at some time during the period charged in the
5 indictment, the defendant participated in the charged crime.

6 The indictment also refers to various amounts of
7 money. If the indictment charges that certain monetary amounts
8 were involved, and the testimony or exhibits indicate that, in
9 fact, a different monetary amount was involved, it is
10 sufficient if you find that the amounts involved are
11 substantially similar to the amounts alleged in the indictment.

12 With that, ladies and gentlemen, we are going to break
13 for the evening. Please do not discuss the case among
14 yourselves or with anyone. There is more to come in my
15 instructions. And I will see you all for a 9:30 start tomorrow
16 morning.

17 Have a very pleasant evening.

18 (Jury exits courtroom)

19 THE COURT: I just want counsel to be aware of the
20 note, which was Court Exhibit 19, which was about the conflict
21 in schedule.

22 I hope everybody has a restful evening, and I will see
23 you tomorrow morning at 9:30.

24 (Adjourned to October 13, 2017, at 9:30 a.m.)